

Report on the

**Board of Medical Examiners & the  
Medical Licensure Commission**

**Montgomery, Alabama**



**Department of  
Examiners of Public Accounts**

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October 20, 2004

Representative Howard Sanderford  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Board of Medical Examiners and Medical Licensure Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Board of Medical Examiners and Medical Licensure Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner



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## PROFILE – BOARD OF MEDICAL EXAMINERS

### Purpose/Authority

- The Board of Medical Examiners regulates the practice of medicine in Alabama by certifying qualified medical and osteopathic doctors to the Medical Licensure Commission for licensure as physicians. The board licenses and regulates the practice of physician assistants. The board receives and investigates complaints against licensed physicians and assistants and also prosecutes administrative complaints against licensed physicians before the Medical Licensure Commission. The board functions under authority of Chapter 24 of Title 34 of the *Code of Alabama 1975*.

### BOARD CHARACTERISTICS

<b>Members</b>	15
<b>Term</b>	Limited to three three-year terms. A member who has served an initial or unexpired term of one year or more may be elected to no more than two additional three-year terms.
<b>Selection</b>	The Board of Censors of the Medical Association of the State of Alabama (MASA) constitutes the Alabama Board of Medical Examiners. The legislative body of MASA elects the Board of Censors.
<b>Racial Representation</b>	No statutory requirement. No minority members.
<b>Geographical Representation</b>	At least one member from each congressional district.
<b>Consumer Representation</b>	No statutory requirement.
<b>Compensation</b>	\$200 per day spent in attendance on official meetings or functions of the board plus travel expense reimbursements at the same rates as are allowed to state employees.

### OPERATIONS

<b>Administrator</b>	Larry D. Dixon Executive Director
<b>Location</b>	848 Washington Avenue Montgomery, Alabama.

<b>Examinations</b>	<p><u>Certificate of Qualification to practice medicine (COQ):</u></p> <p>Applicants for a Certificate of Qualification to practice medicine must achieve a passing score on the United States Medical Licensing Examination (USMLE) or the National Board of Osteopathic Medical Examiners Examination (NBOME).</p> <p>Qualified applicants by endorsement licensed in another jurisdiction before January 2000 may submit proof of a passing score on any of the following examinations:</p> <ol style="list-style-type: none"> <li>1. The Federation Licensing Examination</li> <li>2. The National Board of Medical Examiners Examination.</li> <li>3. The Licensing Medical Council of Canada Examination</li> </ol> <p><u>Assistants:</u></p> <p>Applicants for a Physician or Anesthesiologist Assistant license must successfully complete the Physician Assistant National Certification Examination or the National Certifying Examination for Anesthesiologist Assistants.</p>						
<b>Licenses</b>	<p>Licenses issued and outstanding as of March 3, 2004:</p> <table> <tr> <td>Physician's Assistants</td><td>273</td></tr> <tr> <td>Anesthesiologist's Assistants</td><td>10</td></tr> <tr> <td>Controlled Substance Certificates</td><td>10,675</td></tr> </table>	Physician's Assistants	273	Anesthesiologist's Assistants	10	Controlled Substance Certificates	10,675
Physician's Assistants	273						
Anesthesiologist's Assistants	10						
Controlled Substance Certificates	10,675						
<b>Renewal</b>	Annually by January 1.						
<b>Continuing Education</b>	12 hours annually.						
<b>Reciprocity</b>	There is no licensure by reciprocity. The board endorses (accepts) applicants' examination scores from other jurisdictions for licensure in Alabama if the other jurisdiction's examination covers substantially the same branches of medical learning as required for licensing in Alabama.						
<b>Employees</b>	24 full time, 1 part time.						
<b>Legal Counsel</b>	2 staff attorneys with additional outside counsels appointed for specific cases.						
<b>Subpoena Power</b>	Yes. witnesses and records.						



<b>Internet Presence</b>	<a href="http://www.albme.org">www.albme.org</a> Available information at the web site include: <ul style="list-style-type: none"> <li>• Licensee database search.</li> <li>• Briefs of disciplinary actions taken against licensees.</li> <li>• Information about the complaint process.</li> <li>• Board/Commission Meeting Dates.</li> <li>• Applications for licenses.</li> <li>• Administrative rules.</li> <li>• Information for Practitioners.</li> <li>• Lists of members of the Board of Medical Examiners, the Medical Licensure Commission, and staff.</li> <li>• Board newsletters.</li> </ul>
<b>Attended Board Member Training</b>	Jane W. Hartley, Accountant Robert E. Morrow, Attorney.
<b><u>FINANCIAL INFORMATION</u></b>	
<b>Source of Funds</b>	Licensing fees
<b>State Treasury</b>	No. Funds are maintained in bank accounts by authority of <i>Code 1975</i> , § 34-24-54.
<b>Unused Funds</b>	Retains unexpended funds.

## **PROFILE – MEDICAL LICENSURE COMMISSION**

### **Purpose/Authority**

- The Medical Licensure Commission is exclusively empowered to issue, revoke or reinstate all licenses authorizing the practice of medicine in Alabama. The Commission operates under authority of the *Code of Alabama 1975*, Section 34-24-310 through 34-24-406 and Sections 34-24-500 through 508.

### **COMMISSION CHARACTERISTICS:**

<b>Members</b>	8
<b>Term</b>	5-year staggered. No limitation on the number of terms.
<b>Qualifications</b>	7 physicians licensed to practice medicine or osteopathy in Alabama. 1 public member who may not be a licensee of the commission, or hold a professional degree in any healthcare field or practice as a licensed health care professional.

<b>Selection</b>	The governor appoints 3 physician members and the public member.  The lieutenant governor and the speaker of the House of Representatives each appoints two physician members.
<b>Racial Representation</b>	No statutory requirement. One minority member.
<b>Geographical Representation</b>	No statutory requirement.
<b>Consumer Representation</b>	One public member required.
<b>Compensation</b>	\$200 per day spent in attendance on official meetings or functions of the commission plus travel expense reimbursements at the same rates as are allowed to state employees.
<b><u>OPERATIONS:</u></b>	
<b>Administrator</b>	Larry D. Dixon Executive Director
<b>Location</b>	848 Washington Avenue Montgomery, Alabama.
<b>Examinations</b>	The Board of Medical Examiners administers examinations and recommends qualified applicants to the Medical Licensure Commission for licensure.
<b>Licenses</b>	Licenses issued and outstanding June 23, 2004: <div style="text-align: right;"> DO 562  MD 13,178  Special Purpose and Limited <u>191</u>  Total 13,931 </div>
<b>Renewal</b>	Annually by January 1.
<b>Continuing Education</b>	12 hours annually.

<b>Reciprocity</b>	There is no licensure by reciprocity. The commission license applicants who receive a certificate of qualification from the Board of Medical Examiners. The Board of Medical Examiners endorses (accepts) applicants' examination scores from other jurisdictions if the other jurisdictions' required examination covers substantially the same branches of medical learning as Alabama requires.
<b>Employees</b>	The commission has no employees. The Board of Medical Examiners performs the administrative functions of the Commission.
<b>Subpoena Power</b>	Yes. To compel the attendance of witnesses and the production of records.
<b>Internet Presence</b>	Information about the commission may be found on the internet at Board of Medical Examiners' internet website, <a href="http://www.albme.org">www.albme.org</a>
<b><u>FINANCIAL INFORMATION:</u></b>  <b><u>No financial transactions are accomplished by the commission. The Board of Medical Examiners provides financial administration for both the board and the commission.</u></b>	

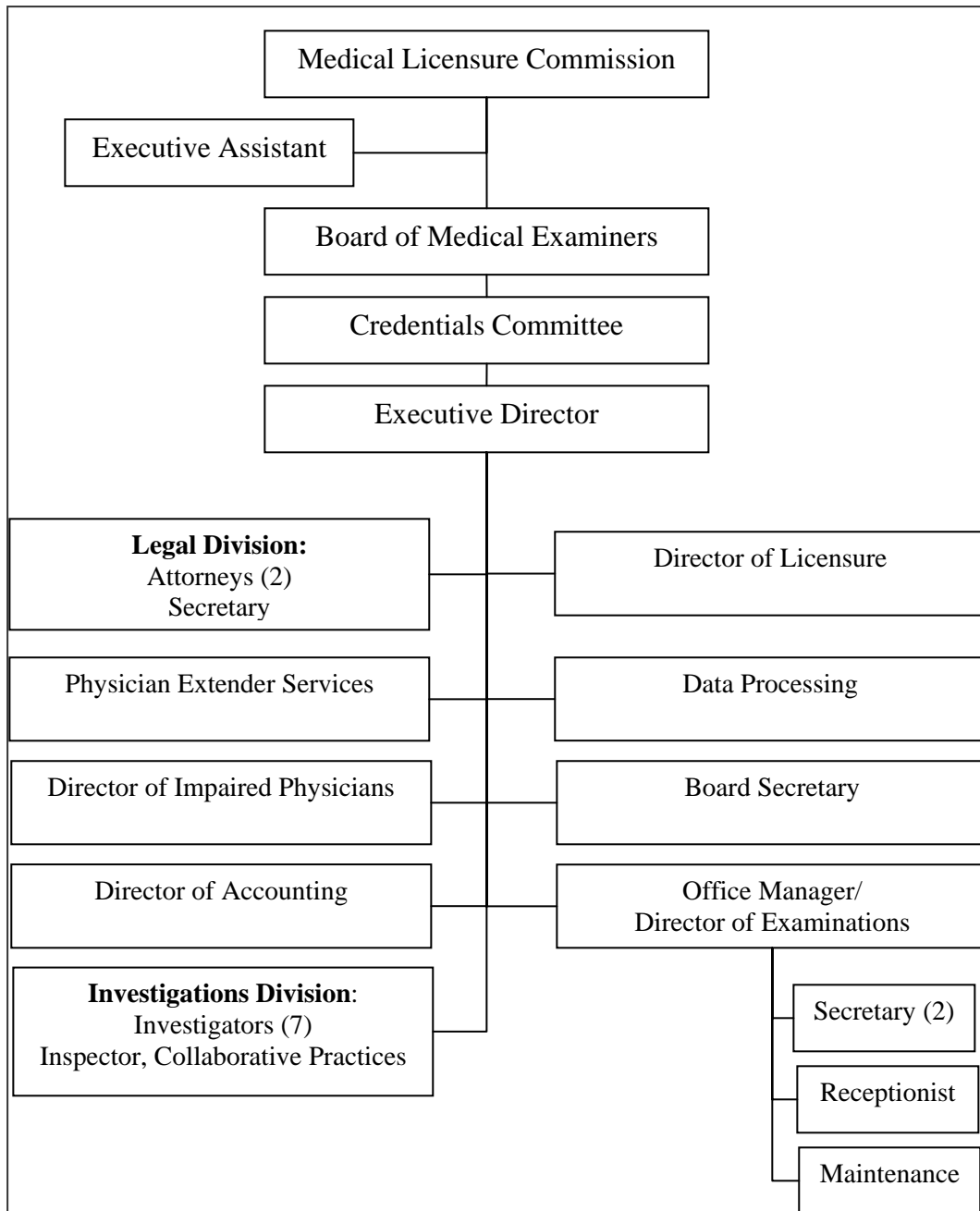
## SIGNIFICANT ITEMS

1. **Lack of direct reimbursement for services by third-party insurance companies continues to be the significant issue for physician assistants.** Sixty-six (66) percent of responses to our questionnaire by physician assistants cited non-reimbursement by insurance companies for their services as a significant issue. Another sixteen (16) percent cited very restricted scope of practice.
2. **Malpractice lawsuits and the rising cost of malpractice insurance continue to be the significant issues for physicians.** Eighteen of the thirty-two responses to this question cited these as their most significant issues.
3. **The most significant issue cited by the Board of Medical Examiners and the Medical Licensure Commission (BME/MLC) in response to our survey is the cost of defending its disciplinary decisions in the courts.** The *Code of Alabama 1975*, Section 34-24-367 provides for judicial reviews of the orders and decisions of the Medical Licensure Commission in accordance with the Alabama Administrative Procedure Act (*Code 1975*, § 41-22-20). Between 2000 and August 2004 the BME/MLC spent \$805,400 in legal fees paid to outside counsel to defend its decisions to revoke eight medical licenses and indefinitely suspend another. All but four of the cases were concluded, with two pending in the Court of Civil Appeals and two in the Alabama Supreme Court. The commission is both an appellant and an appellee in each court.

## STATUS OF PRIOR FINDINGS

There are no unresolved prior findings

## ORGANIZATION



## PERSONNEL

### Schedule of Employees

<b>Classification</b>	<b>Number of Employees</b>	<b>White</b>	<b>Black</b>	<b>Other</b>	<b>Male</b>	<b>Female</b>
Executive Director	1	1			1	
Secretary	3	2		1		3
Attorney	2	2			1	1
Director of Examinations/Office Manager	1	1				1
Director of Licensure	1		1			1
Director, Physician Extender Services	1	1				1
Director of Accounting	1	1				1
Investigators	7	7			7	
Administrative Support Specialist	1	1				1
Inspector	1	1				1
Executive Assistant/MLC	1	1				1
Receptionist/Verification Coordinator	1			1		1
Electronic Filling - Part time	1	1				1
Building Manager	1		1		1	
Computer Software Engineer	1	1			1	
Coordinator, Impaired Physicians Services	1	1			1	
Totals	25	21	2	2	12	13

In addition to its regular employees, the board and commission employ the services of outside legal counsels authorized by the attorney general for specific cases.

## PERFORMANCE CHARACTERISTICS

**Number of Licensees per Employee** – 569

**Total Expenditure per Licensee (2003-2004 fiscal Year)** - \$287.

**Number of Persons per Licensee in Alabama and Surrounding States:**

	Physicians	Physician's Assistants	Population	Population /Physician	Population /Physician's Assistant
Alabama	13,740	283	4,500,752	328	15,904
Florida	52,380	3,489	17,019,068	325	4,878
Georgia	25,842	2,188	8,684,715	336	3,969
Mississippi	8,354	45	2,881,281	345	64,028
Tennessee	18,350	679	5,841,748	318	8,603

**Notification to Licensees of Board and Commission decisions to Amend  
Administrative Rules**

Administrative rules are adopted and amended in accordance with the requirements of the Alabama Administrative Procedure Act. Important notices and information are also brought to the attention of licensees through the *Alabama Board of Medical Examiners Newsletter*. Licensees are also directed to the board's Internet website for more information.

**Complaint Process**

<b>Initial Documentation</b>	All complaints are initially screened to determine if the board has jurisdiction. Valid complains are logged into the complaint database and the complaint is acknowledged by mail to the complainant.
<b>Anonymous Complaints</b>	The board does not accept anonymous complaints.
<b>Review Process</b>	<p>The chief investigator assigns an investigator to the complaint. The licensee complained against is notified and asked to respond to the complaint.</p> <p>Based on the licensee's response and the investigator's report, the board may find no basis for action against the licensee's license and so notifies the complainant. The board may also issue a letter of concern to the licensee, or file an administrative complaint against the licensee with the Medical Licensure Commission.</p> <p>The board may notify the complainant when a letter of concern is issued; however a letter of concern is not normally made public.</p>
<b>Formal Hearings</b>	Formal administrative hearings are conducted in accordance with the Alabama Administrative Procedure Act, <i>Code 1975</i> , § 41-20-1 et sec.

## **Complaint Resolution**

	<u>2003</u>	<u>2002</u>	<u>2001</u>
Patient Complaints Received	319	125	210
Patient Complaints Investigated	160	125	210
Complaints filed with Medical Licensure Commission	25	28	38
Letters of Concern Issued	59	71	89
Medical Licenses Revoked	11	8	4
Medical Licenses Suspended	4	1	0

## **FINANCIAL INFORMATION**

### **Schedule of Fees**

<b>Fee</b>	<b>Authorized</b>	<b>Collected</b>	<b>Authority</b>
Application/Reciprocity	\$ 175	\$ 175	34-24-70(a)(4)
Original License	Not to exceed \$150	\$ 75	34-24-334
Annual License Renewal	Not to exceed \$300	\$ 200	34-24-337(a)
Reinstatement	\$250 plus back renewal fees not paid, not to exceed \$500		34-24-337(a)
Limited License	Equal to Reciprocity	\$ 175	34-24-75
Limited License Renewal	Not to exceed \$15	\$ 15	34-24-75
<sup>1</sup> USMLE III	Set by Federation of State Medical Boards		34-24-70(a)
<sup>2</sup> PA/AA License Application	Set by Board	\$ 200	34-24-293
PA/AA Renewal	Set by Board	\$ 100	34-24-293
PA/AA Registration	Set by Board	\$ 100	34-24-293
<sup>3</sup> ACSC	Set by Board	\$ 100	20-2-2(4)
Outgoing Reciprocity		\$ 10	34-24-331
Replacement Certificate		\$ 20	34-24-332
Rules and Regulations	Cost of copying	\$ 20	41-22-4
PA Directory		\$ 50	540-X-1-.13

<sup>1</sup> United States Medical Licensing Examination.

<sup>2</sup> PA – Physician's Assistant  
AA – Anesthesiologist's Assistant

<sup>3</sup> Alabama Controlled Substance Certificate

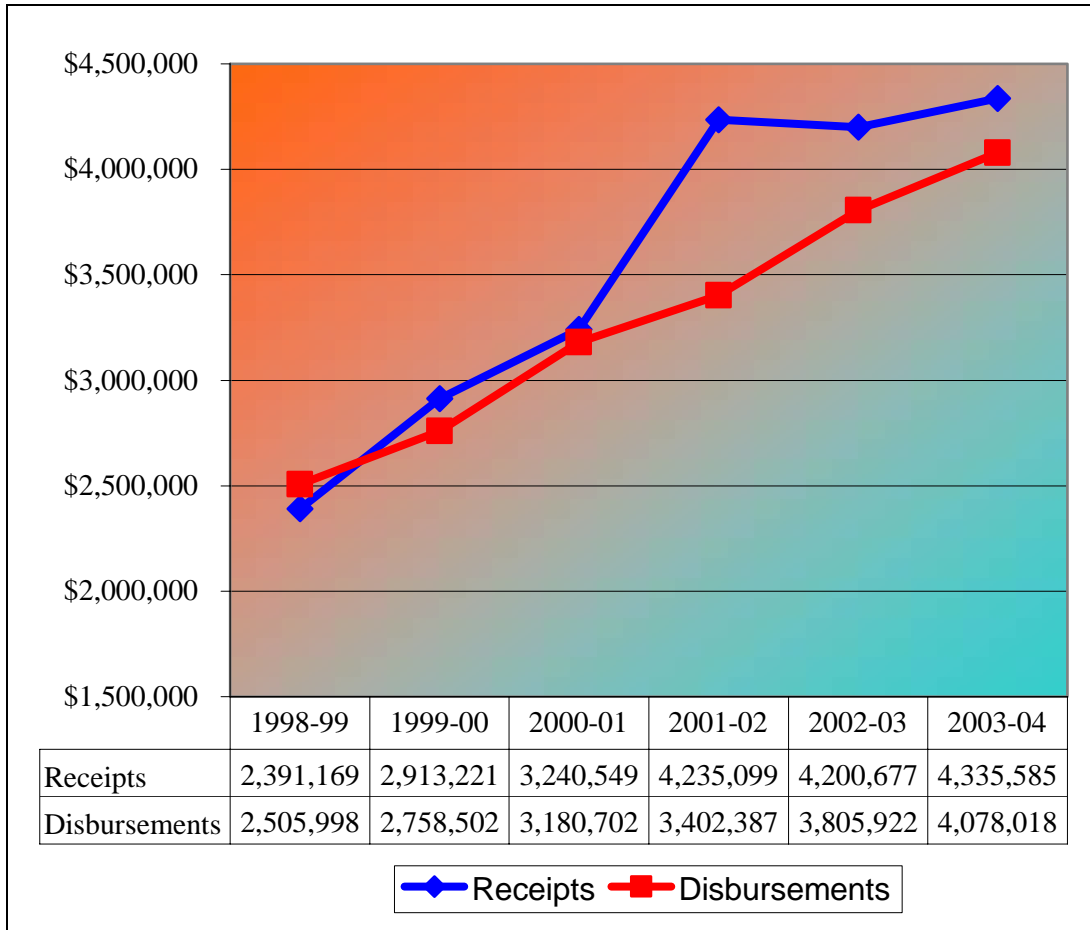


License Application Package	\$ 20	540-X-1-.15
Release of Data	5¢/record/10 data fields. 1¢/additional data field	540-X-1-.14

**Schedule of Operating Receipts, Disbursements, and Balances**  
**October 1, 1999 through September 30, 2004**

	<u>2003/2004</u>	<u>2002/2003</u>	<u>2001/2002</u>	<u>2000/2001</u>
<b>Receipts:</b>				
Licenses and Permits	\$ 1,249,275	\$ 1,226,065	\$ 1,228,210	\$ 1,207,600
Reciprocity Fees	140,020	136,270	128,255	126,885
Professional Registration	2,749,575	2,730,200	2,736,675	1,763,125
Miscellaneous Fees	44,792	33,979	45,759	20,849
Fines and Penalties	103,000	28,000	56,000	43,200
Interest Income	48,923	46,164	40,201	78,890
<b>Total</b>	<u>4,335,585</u>	<u>4,200,677</u>	<u>4,235,099</u>	<u>3,240,549</u>
<b>Disbursements:</b>				
Personnel Costs	2,214,917	1,790,206	1,694,885	1,547,702
Travel	282,342	315,098	335,999	272,257
Repairs & Maintenance	21,753	31,484	9,412	15,499
Rentals and Leases	261,434	241,006	145,481	146,244
Utilities & Communication	102,915	99,639	92,496	80,179
Professional Services	249,828	392,646	496,731	360,618
Supplies, Mat'l, & Oper Exp	500,890	474,755	336,146	426,421
Equipment Purchases	193,940	243,588	77,901	106,785
Transfers	250,000	217,500	213,336	224,997
<b>Total</b>	<u>4,078,018</u>	<u>3,805,922</u>	<u>3,402,387</u>	<u>3,180,702</u>
Excess of Receipts over Disbursements	257,566	394,756	832,712	59,848
Cash Balance at October 1	<u>2,110,562</u>	<u>1,715,806</u>	<u>883,094</u>	<u>823,246</u>
Cash Balance at September 30	<u>\$ 2,368,128</u>	<u>\$ 2,110,562</u>	<u>\$ 1,715,806</u>	<u>\$ 883,094</u>

Operating Receipts Vs Operating Disbursements (Chart)



*Board of Medical Examiners Questionnaire*

## QUESTIONNAIRES

### Board of Medical Examiners

A questionnaire was sent to the fifteen (15) members of the Board of Medical Examiners. Eleven (11) responded as follows.

#### Question #1

**What are the most significant issues currently facing the Board of Medical Examiners and how is the Board addressing these issues?**

*Board Member #1:* The Board actions against physicians have been overturned in the local court system. This has created a problem and unnecessary expense to the Board. This is a very significant issue facing our Board.

*Board Member #2:* I am concerned about judges trying to overturn the good faith efforts of professional boards. This has happened recently with the BME. The board is handling this effectively through the appeals process, with a recent verdict in our favor in the one case that has been ruled on thus far;

*Board Member #3:* The board takes seriously its obligation to investigate complaints against physicians. Recently our decisions have been overturned by Circuit Court judges. This is costly to the agency and dilutes our due diligence efforts. We continue to appeal those decisions – very costly.

*Board Member #4:* The tendency of problem physicians litigating disciplinary actions, which prolong the correction of problems and expend considerable resources.

*Board Member #5:* Recently trial courts have overturned the decision to take major actions against the license of physicians we had prosecuted. We feel strongly that unsafe MDs' licenses should be revoked and yet the courts have overturned three different decisions—we are appealing all of these decisions.

*Board Member #6:* Patient protection. Review complaints — Make informed recommendations when indicated by the facts.

*Board Member #7:* The most significant issues facing the BME are the recent challenges to the Board's authority to discipline physicians for negligence and misconduct. Over the past 2 years there have been several legal challenges. The BME and the Medical Licensure Commission have addressed this problem by aggressively defending these cases in court. Although the first of these cases to be heard by the Alabama Supreme Court resulted in a ruling in the BME and MLC's favor, the legal fees were [about] \$500,000.

*Board Member #8:* Investigation and discipline of physician behavior that does not meet professional standards. There is an ongoing effort by the board and its employees to stay the current endeavor.

## *Board of Medical Examiners Questionnaire*

*Board Member #9:* Appropriate disciplinary actions by the Board of Medical Examiners which have been overturned by the trial courts

*Board Member #10:* Disciplinary actions being appealed to the court system. This is very expensive and unpredictable. We consider all factors before recommending a disciplinary action against a physician. Therefore we feel it is imperative to fight any reversals to our decisions by the court system.

*Board Member #11:* Judges overturning our disciplinary actions and having to address this through the appeal process.

### **Question #2**

#### **What changes to the Medical Licensure and Practice Act are needed?**

*Board Member #1:* The Legislature has been very responsive with our board request.

*Board Member #2:* Not aware of any at present.

*Board Member #3:* This is an evolving process and our agency looks at this on a continuing basis year to year (legislative).

*Board Member #4:* None at this time. The legislature has addressed problems in the past.

*Board Member #5:* We have asked for and received changes in the past to help us fairly discipline physicians. I see no major changes needed at this time.

*Board Member #6:* Those issues have not been discussed. Will be discussed Fall 2004. So far the legislature has been responding well to our requests especially [on] issues of discipline and overturned disciplinary actions.

*Board Member #7:* I do not see a need for significant changes in the Medical Practice Act. Periodically, we have a need for modifications, but we are able to accomplish this through the legislature or through the rule-making process, whichever s appropriate.

*Board Member #8:* None presently; most issues are addressed by the legislature in a timely manner when they arise.

*Board Member #9:* Continued support by the legislature of requests (by the Board of Medical Examiners) for changes that assure that the Board is not constrained in its function.

*Board Member #10:* None

*Board Member #11:* None at the present. Our problem is appeals of disciplinary action that have been overturned by the trial court and other [] have to be appealed.

**Question #3**

**Is the Board adequately funded?**

11 Yes

0 No

***Additional Comments:***

*Board Member #7:* Yes. However, the above noted trend in legal challenges—if it continues—will continue to drain the agency’s reserves. If the agencies’ monetary reserves reach the point where the MLCBME are perceived to be unable to afford defending its decisions in court, an increase legal challenges can be expected.

**Question #4**

**Is the Board adequately staffed?**

11 Yes

0 No

***Additional Comments:***

*Board Member #10:* Excellent staff. Always have information to us in a timely fashion.

**Question #5**

**What is the purpose of your fiscal year-end balance of unobligated funds?**

*Board Member #1:* We must maintain adequate funds for legal expenses. We have several cases that are in the appeals process.

*Board Member #2:* It is a reserve that results from good fiscal management by the board and staff. Presently I know a good part of it will be required for the legal appeals mentioned above.

*Board Member #3:* We must keep adequate reserves to fund the costly legal process defined in #1.

*Board Member #4:* We are seeing an unprecedented increase in the cost of litigating our decision

*Board Member #5:* As physicians have recently gone to court for relief against our actions against their licenses our legal fees have been extremely high and the uncertainty of cases in the future promises to increase legal fees even more, therefore the need for a significant reserve.

*Board Member #6:* To help fund appeals from disciplinary cases.

*Board Member #7:* As discussed in #1 and #3 the Board of Medical Examiners incurred significant legal fees defending [against] court challenges to BME and MLC decisions. Although these funds may be “unobligated” I anticipate escalating legal expenses from the pending court cases and future cases that are certain to follow.

## ***Board of Medical Examiners Questionnaire***

*Board Member #8:* The cost of pressing cases through the court system when necessary cannot be predicted or budgeted for. Unobligated funds are generally held in a legal reserve for such unpredictable expenses.

*Board Member #9:* A balance of unobligated funds is to assure adequate (financial) coverage for necessary legal expenses, etc.

*Board Member #10:* Court costs are an unknown factor. I think the majority of unobligated funds go to our legal reserve.

*Board Member #11:* Needed for huge legal bills due to contested cases. Have at least two other cases pending with legal fees. Without adequate reserves we could not defend our disciplinary actions and this would encourage others to contest and appeal more actions.



### Medical Licensure Commission

A questionnaire was sent to the eight (8) members of the Medical Licensure Commission. Five (5) responded as follows.

#### **Question #1**

**What are the most significant issues currently facing the Medical Licensure Commission and how is the Commission addressing these issues?**

*Commission Member #1:* Within recent years there have been several disciplinary decisions rendered by the Medical Licensure Commission that have been appealed to the trial court level with some decisions being overturned. This is a very significant issue presently faced by the Medical Licensure Commission. The Commission addresses this issue by taking all steps allowed in the appeal process.

*Commission Member #2:* The most significant issue is that of appeals of disciplinary actions that have been overturned at a lower court level, i.e., the trial court level or the circuit court level. This significant issue is being addressed by appeals to higher court levels with the appeal process which is very time consuming and very costly.

*Commission Member #3:* We are very concerned by the fact that several of our decisions on disciplinary actions taken after lengthy hearings and careful deliberations have been overturned on appeal at the circuit court or appellate court level.

*Commission Member #4:* Appeals of disciplinary actions that have been overturned at the trial court level. The Commission is addressing the issue through the appeal process.

*Commission Member #5:* The most important issue facing the MLC at this time is the way the civil court judges have reversed our decisions on several cases. We have made decisions after due process and the courts have reversed us not on the record, but based on their own feelings about the case.

Second is the high cost of litigation... especially when we have to carry our plea to a higher court above the civil courts.

#### **Question #2**

**What changes to the Medical Licensure and Practice Act are needed?**

*Board Member #1:* The Commission remains alert to any issue that may need to be addressed by amending the Medical Practice Act to discharge our duties in protecting the citizens of the State of Alabama. The Alabama Legislature has always willingly responded to requests made by the Commission for necessary changes.

## *Medical Licensure Commission Questionnaire*

*Board Member #2:* This question has been addressed recently by the Alabama Legislature with changes in the Medical Practice Act that would be consistent with the request of the Commission in dealing with changes that require a change in statute.

*Board Member #3:* Due to the above problem, some changes may be required in the Medical Practice Act, and we are well aware that the legislature has been very helpful when we have asked for assistance in the past.

*Board Member #4:* The legislature has been forthcoming in responding to requests from the Commission in dealing with necessary changes.

*Board Member #5:* At this time I am not sure that changes are needed. We are constantly trying to keep the Medical Practice Act appropriate for the times.

### **Question #3**

**Is the Commission adequately funded?**

  5   Yes

  0   No

### **Question #4**

**Is the Commission adequately staffed?**

  4   Yes

  1   No

### ***Additional Comments:***

*Board Member #5:* [No]. As far as I know.

Physicians

A questionnaire was sent to one hundred (100) physicians. Fifty-two (52) responded as follows.

**Question #1**

**Do you think regulation of your profession by the Board and Commission is necessary to protect public welfare?**

\_\_\_48\_\_\_ Yes                      \_\_\_3\_\_\_ No                      \_\_\_1\_\_\_ No Opinion

**Question #2**

**Do you think any of the laws, rules, and policies administered by the Board and Commission are an unnecessary restriction on the practice of your profession?**

\_\_\_9\_\_\_ Yes                      \_\_\_33\_\_\_ No                      \_\_\_10\_\_\_ No Opinion

**Additional Comments:**

- Not sure as I am unaware of all the laws, rules and policies.

**Question #3**

**Do you think any of the Board and Commission's requirements is irrelevant to the competent practice of your profession?**

\_\_\_9\_\_\_ Yes                      \_\_\_33\_\_\_ No                      \_\_\_10\_\_\_ No Opinion

**Question #4**

**Are you adequately informed by the Board and Commission of changes to and interpretations of Board and Commission's positions on issues, policies, rules and laws?**

\_\_\_30\_\_\_ Yes                      \_\_\_13\_\_\_ No                      \_\_\_9\_\_\_ No Opinion

**Additional Comments:**

- I would like printed rules for myself

**Question #5**

**Have the Board and Commission performed your licensing or renewal in a timely manner?**

\_\_\_51\_\_\_ Yes                      \_\_\_0\_\_\_ No                      \_\_\_1\_\_\_ No Opinion

**Additional Comments:**

- The online option is great.

**Question #6**

**Do you consider mandatory continuing education necessary for the competent practice of your profession?**

37 Yes

8 No

7 No Opinion

**Question #7**

**Has the Board and Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

39 Yes

1 No

12 No Opinion

**Question #8**

**What do you think is the most significant issue currently facing your profession in Alabama and what are the Board and Commission doing to address the issue?**

- I suppose defensive medicine due to litigious society
- Liability—Physicians are “sued” without due cause oftentimes. It’s all about money
- Not sure at this point
- Malpractice law suits, bad state and federal legislators. Both have increased the cost of medicine. Doctors must support their lobbying interests know who to vote for.
- Legal liability. The Board and all of us need to urgently and aggressively solve this problem.
- Need for tort reform. Excessively high liability insurance premiums.
- Lack of funding by Medicaid. No one seems to value what I do.
- Tort reform and lawsuit liability caps.
- Malpractice issues. Tort reform.
- I am out of state, but I’ll bet everyone’s most significant issue is the extent of litigation.
- Regulation of ‘rogue’ physicians.
- Probably interference of HMO mandates on practice of medicine—as this is our primary Wisconsin problem.
- Malpractice insurance costs.
- Liability. Skyrocket of malpractice settlement—very wrong.

- Medicare/Medicaid restrictions on prescriptions and diagnostic testing choices. Don't know what the Commission and Board are doing to address this issue. I want more authority to confer with pharmacies and other doctors RE narcotics use patterns in patients that I suspect are overusing or abusing controlled substances.
- The malpractice insurance issue. Nothing.
- Nurse Practitioner license
- Malpractice—Liability insurance. Too much paperwork and regulations. Nothing.
- Insurance reimbursement and tort reform.
- Rising malpractice coverage. Third party control of medical files. Unaware of any action [by Board or Commission].
- Limits needed on pain and suffering awards.
- Attempts by unqualified persons to practice medicine, which the Board and Commission are most effective in preventing.
- Medicare funding: It is in the hands of Congress (Politicians) and they seem to do what they always do—defer paying to the next generation. Not facing the spending decisions!
- Tort reform.--?
- Tort Reform.
- Funding for Medicaid.
- Medical malpractice. Continue lobbying for avenues to limit frivolous lawsuits.
- Malpractice rates.
- High malpractice premiums. Support of solo practitioners. Nothing.
- Define the boundaries of advance practice nursing consistent with the Alabama Practice Act
- Cost of malpractice insurance. I believe Alabama needs a “Malpractice Board” to pre-screen cases to see if they are worthy of going to trial. I believe Indiana has such a program and frivolous cases are screened out and don't go to court. Perhaps a review board consisting of medical board and trial lawyers could review cases. This could lower our insurance premium and decrease the caseload in court. I'll bet Indiana (if I have the correct state) has already figured it out. Thanks.
- Tort reform. Patient drug abuse.

**Question #9**

**Do you think the Board and Commission and their staff are satisfactorily performing their duties?**

37 Yes

3 No

12 No Opinion

**Additional Comments:**

- [Yes] In regards to licensing.
- Don't know.

**Question #10**

**Has any member of the Board, Commission or their staff asked for money (other than normal licensing and regulatory fees), services, or any other thing of value in return for performing a Board or Commission service for you?**

0 Yes

47 No

5 No Response

Physician's Assistants

A questionnaire was sent to one hundred (100) physician's assistants. Sixty-five (65) responded as follows.

**Question #1**

**Do you think regulation of your profession by the Board and Commission is necessary to protect public welfare?**

59 Yes                      3 No                      3 No Opinion

**Question #2**

**Do you think any of the laws, rules, and policies administered by the Board and Commission are an unnecessary restriction on the practice of your profession?**

25 Yes                      35 No                      5 No Opinion

**Additional Comments:**

- Prescriptive privileges.
- Need the ability to prescribe scheduled drugs II-V.

**Question #3**

**Do you think any of the Board and Commission's requirements is irrelevant to the competent practice of your profession?**

10 Yes                      49 No                      6 No Opinion

**Additional Comments:**

- Some laws and rules are antiquated and no longer applicable to today. Some basic PA procedures done during training can be restricted after beginning practice with some specialist. RE: [illegible] Radiology procedure etc.

**Question #4**

**Are you adequately informed by the Board and Commission of changes to and interpretations of Board and Commission's positions on issues, policies, rules and laws?**

51 Yes                      10 No                      4 No Opinion

**Additional Comments:**

- [No] Need to inform before rule changes are final. This issue has been brought to liaison [illegible] attention twice.
- [No Opinion] There is room for improvement with communication

**Question #5**

**Have the Board and Commission performed your licensing or renewal in a timely manner?**

64 Yes                      0 No                      1 No Opinion

**Question #6**

**Do you consider mandatory continuing education necessary for the competent practice of your profession?**

52 Yes                      9 No                      4 No Opinion

**Additional Comments:**

- [Yes] But feel number hours are excessive. Crops have fewer hours of CEU to obtain.

**Question #7**

**Has the Board and Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

46 Yes                      7 No                      12 No Opinion

**Additional Comments:**

- Board does not approve CME, but accepts that approved by other agencies.

**Question #8**

**What do you think is the most significant issue currently facing your profession in Alabama and what are the Board and Commission doing to address the issue?**

- Malpractice insurance rates. Don't know.
- Compensation
- Reimbursement. I have no idea what, if anything, the Board and Commission are doing in this regard
- Reimbursement for services provided to patients.
- Blue Cross reimbursement for PA service. I don't know.
- There are some unreasonable restrictions on PA practice. The Board will listen to PA concern but it is rarely willing to change.
- Reimbursement issues. PA services/BCBS.
- 1) Inability to prescribe scheduled drugs (controlled substances) which is customary in most states. The board refuses to consider this request. 2) Unduly strict requirements to prove proficiency to perform surgical and diagnostic procedures necessary in most practices. It seems to essentially be impossible for



the PA and supervising physician to assure proficiency of the PA to the Board's satisfaction

- Expanding practice ability (i.e. prescribing of scheduled drugs).
- Blue Cross Blue Shield refusing to pay for Physician Assistant services.
- Reimbursement issues with BCBS. Need prescription privilege for schedule II-V drugs. No action at this time. PA Liaison Committee will be visiting this issue soon.
- Restrictive practice laws. Restrictive prescribing laws. As a PA, our profession is too restricted as compared to most other states, including surrounding states, and therefore drives many PAs out of Alabama to practice.
- Blue Cross law suit.
- Reimbursement. BC/BS AL. Prescriptive privileges for controlled substances (DEA#). As far as I know, nothing has been done to address these issues.
- Rising cost of malpractice insurance and excessive litigation. Continuing to push for caps on malpractice awards.
- Blue Cross reimbursement. I am not sure how the Board is addressing this issue.
- Public access to care. Board does not control this. Federal and state governments should up funding.
- 1) Being able to write prescriptions for schedule II-V medications. 2) Having to re-submit new application fee when changing employers. I don't know if the above issues are currently being addressed.
- Blue Cross Blue Shield payment of services. I'm not sure what the Board actions have been regarding this.
- Reimbursement by 3<sup>rd</sup> party insurance. Unsure that they are doing anything.
- Reimbursement by third party insurance.
- Medical reimbursement of third party insurance companies (i.e. BC/BS).
- Need for PA-C with voting seat on the Alabama Board of Medical Examiners.
- In my opinion, there is no significant issue that is not addressed by the Board.
- Reimbursement. Nothing.
- Changing rules to allow PAs to prescribe other than non-controlled substances. The Board refuses to discuss this issue!
- Issues regarding fee for service, The Board and the Commission have helped further the PA lobby and have supported us when needed.
- BCBS reimbursement.
- Blue Cross Blue Shield reimbursement. Controlled substance R<sub>x</sub> rights.
- Narcotic prescription privileges. Unsure of the Board's progress in this area.

## *Physicians Assistants Questionnaire*

- Reimbursement issue with Blue Cross Blue Shield...has been mandated by the Supreme Court
- Payment by Blue Cross. Also doctors using non-licensed techs to perform PA jobs in their practice.
- BCBS
- Several insurance reimbursement issues are priority to me and I am unaware if they are doing anything about t.
- Insurance reimbursement.
- Reimbursement issues
- A) Failure of Blue Cross/Blue Shield to comply with court order to reimburse for physician assistants' fees. b) Don't know what the Board is doing about it.
- Blue Cross-Blue Shield reimbursement!
- Insurance reimbursement!
- BS-BS of AL insurance company illegally refusing to pay for Physician Assistant provider services that are standard practice reimbursed to PA by other insurance providers. Court/legal proceeding under way but not assisted by the Board of Medical Examiners.
- CME/proper licensing. They are addressing these issues adequately.
- Reimbursement issues, primarily Blue Cross/Blue Shield, which hopefully will no longer be a problem. Also prescriptive privileges for scheduled drugs.
- Blue Cross-Blue Shield's refusal to comply the 3<sup>rd</sup> party reimbursement law. Nothing of which I am aware.
- Reimbursement. Litigation with BC/BS.
- Reimbursement for PA activities. Not doing enough.
- Reimbursement —?
- Reimbursement from BC/BS of Alabama.
- Most recently, reimbursement issues of PAs by BC/BS.
- Reimbursement from medical/surgical insurance providers ignoring 1997 laws while many PAs leave this state (2 Programs). Would mean better \$ and better health care in Alabama (including rural and city).
- BCBS—Board has been beneficial in helping PAs.

**Question #9**

**Do you think the Board and Commission and their staff are satisfactorily performing their duties?**

49 Yes

2 No

11 No Opinion

**Additional Comments:**

- [Yes] Although in the past, staff has not always been courteous on the phone.
- With above exception.

**Question #10**

**Has any member of the Board, Commission or their staff asked for money (other than normal licensing and regulatory fees), services, or any other thing of value in return for performing a Board or Commission service for you?**

0 Yes

63 No

2 No Opinion

## Complainants Questionnaire

### Complainants

A questionnaire was sent to one hundred (100) complainants. Thirty-four (34) responded as follows.

#### Question #1

**Was your complaint filed with the Board of Medical Examiners by:**

27 Mail      7 Phone      0 Fax      0 Other      0 Unknown

#### Question #2

**Was receipt of your complaint promptly acknowledged?**

31 Yes      2 No

*If yes, approximately how long after you filed your complaint were you contacted by the Board?*

0 Immediately      12 Within 10 days      4 Within 20 days

12 Within 30 days      3 More than 30 days      0 Did not respond

3 Unknown

#### **Additional Comments:**

- Note: Although a response was received in 30 days, it took 6 months to get a disposition. TOO LONG!!
- I had to contact them!!

#### Question #3

**Was the employee who responded to your complaint knowledgeable and courteous?**

1 Knowledgeable      10 Courteous      4 Neither

17 Knowledgeable and Courteous      1 Unknown

#### **Additional Comments:**

- Mail correspondence only was received; no employee contacted me in person or by phone.
- Letter.

**Question #4**

**Did the Board communicate the results of investigating your complaint to you?**

31 Yes

2 No

1 Unknown

**Additional Comments:**

- By mail only. I was never personally involved. The response in my case was: "Did not warrant an investigation."
- Letter.
- Yes. However, I never received an apology from the physician.
- Yes. Said they will check into it.

**Question #5**

**Do you think the Board did everything it could to resolve your complaint?**

8 Yes

20 No

6 Unknown

**Additional Comments:**

- They did absolutely nothing!!

**Question #6**

**Were you satisfied with your dealings with the Board?**

9 Yes

21 No

4 Unknown

**Additional Comments:**

- My complaint was completely overturned. The damage done to my body and eyes, in their opinion, was perfectly fine. I live in misery.
- I feel they were on the doctor's side. I almost died, those doctors telling me I was constipated when my intestines were twisted. If I had listened to them I would not be able to answer this questionnaire!
- They allowed the doctor to explain away each item of my complaint. A lot of what he had to say were lies.
- [No.] I find [redacted] very nice and he agreed mine was a horror story. We had more than one complaint from other people I'd talked to. I had an agent come out from Birmingham last year and that was the last I heard. I called Montgomery about six weeks ago and no one returned my call. I feel Dr. [redacted] shouldn't be allowed to continue his practice. It is pretty good when you call up your gas company to place an order, get talking with the girl about how Dr. --- almost let you die and her comment was "Oh he killed my father-in-law in six weeks." I asked why doesn't somebody do something. She said: "Oh everybody knows he's a fake." Great, [Signed: [redacted] [redacted]]

## *Complainants Questionnaire*

- I wish there was someone we could speak to about the decision the board made. We got a letter of apology from Mr. [REDACTED] over errors he made, but they did not review our case. We are **thoroughly disgusted** with the whole process! [Signed: [REDACTED] and [REDACTED]].
- I still had to pay the bill and Dr. [REDACTED] never contacted me or responded to my phone calls concerning my son's condition. As far as I am concerned the board did nothing to the doctor and the board should [disband] and save Taxpayer money. We had to get another doctor who communicated with us about our son's condition. This is an example of doctors policing doctors and still being paid for their lack of concern. Dr. [REDACTED] was interested in the almighty dollar instead of quality care for my son. This questionnaire is probably just as big a joke as filing a complaint with the State Board of Medical Examiners
- I was not completely pleased with the results of actions against the doctor after all I had done before the Board got involved in the case. I had called many times and talked with him about my concerns and with his record I felt more action could have taken place.

# APPENDICES

## Statutory Authority





**Act 2004-374**

# ACT No. 2004-374

1 SB355  
2 64366-3  
3 By Senator Lindsey  
4 RFD: Economic Expansion and Trade  
5 First Read: 24-FEB-04



1  
2  
3 ENROLLED, An Act,

4 To amend Section 34-24-70, Code of Alabama 1975, to  
5 allow the State Board of Medical Examiners to extend the  
6 10-year period of time for completion of certain steps of the  
7 United States Medical Licensing Examination for dual degree  
8 candidates.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 34-24-70, Code of Alabama 1975,  
11 is amended to read as follows:

12 "§34-24-70.

13 "(a) The following constitute the requirements for  
14 the issuance of a certificate of qualification for a license  
15 to practice medicine in this state:

16 "(1) MEDICAL EDUCATION REQUIREMENT. All applicants  
17 for a certificate of qualification shall present a diploma or  
18 evidence of graduation from any of the following institutions:

19 "a. A college of medicine or school of medicine  
20 accredited by the Liaison Committee on Medical Education of  
21 the American Medical Association.

22 "b. A college of osteopathy accredited by the  
23 American Osteopathic Association.

24 "c. A college of medicine or school of medicine not  
25 accredited by the Liaison Committee on Medical Education which

1 is approved by the Board of Medical Examiners. The board may,  
2 within its discretion, withhold approval of any college of  
3 medicine not designated in either a., or b., above which:

4 "1. Has had its accreditation withdrawn by a  
5 national or regional accreditation organization; or

6 "2. Has had its authorization, certification, or  
7 licensure revoked or withdrawn by a national or regional  
8 governmental supervisory agency; or

9 "3. Has been denied approval or has had its approval  
10 withdrawn by any national, state, or territorial licensing  
11 jurisdiction based upon an evaluation of the college of  
12 medicine or upon a finding of misconduct by the college; or

13 "4. The board has determined, has engaged in  
14 fraudulent, criminal, or other practices which are  
15 inconsistent with quality medical education.

16 "(2) POST-GRADUATE EDUCATION REQUIREMENT.

17 "1. Applicants for a certificate of qualification  
18 who graduated from a college of medicine accredited by the  
19 Liaison Committee on Medical Education of the American Medical  
20 Association or a college of osteopathy accredited by the  
21 American Osteopathic Association shall present evidence  
22 satisfactory to the board that the applicant has completed one  
23 year of post-graduate or residency training in any of the  
24 following programs:

1           "a. A program listed in the directory of approved  
2       residency training programs published by the American Medical  
3       Association.

4           "b. A program accredited by the American Osteopathic  
5       Association.

6           "c. A program accredited by the Accreditation  
7       Committee of Royal College of Physicians and Surgeons of  
8       Canada.

9           "d. A program accredited by the College of Family  
10      Physicians of Canada.

11          "2. All other applicants for a certificate of  
12      qualification who graduated from a college of medicine not  
13      accredited by the Liaison Committee on Medical Education of  
14      the American Medical Association or a college of osteopathy  
15      not accredited by the American Osteopathic Association shall  
16      present evidence satisfactory to the board that the applicant  
17      has completed three years of postgraduate or residency  
18      training in any of the following programs:

19          "a. A program listed in the directory of approved  
20      residency training programs published by the American Medical  
21      Association.

22          "b. A program accredited by the American Osteopathic  
23      Association.

1                "c. A program accredited by the Accreditation  
2        Committee of Royal College of Physicians and Surgeons of  
3        Canada.

4                "d. A program accredited by the College of Family  
5        Physicians of Canada.

6                "(3) EXAMINATION REQUIREMENTS. Applicants for a  
7        certificate of qualification shall achieve a passing score as  
8        determined by the Board of Medical Examiners on any of the  
9        examinations listed below:

10               "a. The United States Medical Licensing Examination.

11               "1. Applicants who are not dual degree candidates as  
12        specified in subparagraph (3)a.2. below shall have achieved a  
13        passing score on Step 3 in not more than three  
14        administrations, except that the board may approve one  
15        additional attempt to pass Step 3 after demonstration by the  
16        applicant of additional educational experience acceptable to  
17        the board. Applicants who are not dual degree candidates shall  
18        have completed Steps 1, 2, and 3 within a seven-year period.  
19        The seven-year period begins when the applicant initially  
20        passes his or her first step. The board shall not accept  
21        scores from a reexamination of a previously passed step of the  
22        USMLE.

23               "2. Applicants who are dual degree candidates,  
24        pursuing the M.D. or D.O. degree and the Ph.D degree in a  
25        field of biological sciences approved by the board in its

1 rules, shall have achieved a passing score on Step 3 in not  
2 more than three administrations, except that the board may  
3 approve one additional attempt to pass Step 3 after  
4 demonstration by the applicant of additional educational  
5 experience acceptable to the board. Applicants who are dual  
6 degree candidates shall have completed Steps 1, 2, and 3  
7 within a 10-year period except that the board may approve,  
8 within its discretion and at the request of the applicant, a  
9 longer period not to exceed 15 years. The time period for  
10 completion of Steps 1, 2, and 3 begins when the applicant  
11 initially passes his or her first step. The board shall not  
12 accept scores from a reexamination of a previously passed step  
13 of the USMLE.

14 "b. The Federation Licensing Examination.

15 "c. The National Board of Medical Examiners  
16 Examination.

17 "d. The National Board of Osteopathic Medical  
18 Examiners Examination or its successor examination.

19 "e. The Licensing Medical Council of Canada  
20 Examination.

21 "f. Any other examination which is currently  
22 approved or which may later be approved by the Board of  
23 Medical Examiners and which examines in the following branches  
24 of medical learning: General medicine, surgery, obstetrics,

gynecology, preventive medicine, jurisprudence, and any other branches as the board may require.

"g. Beginning January 1, 2000, the following requirements shall apply:

"1. All applicants for initial licensure by examination shall achieve a passing score, as determined by the Board of Medical Examiners, on the United States Medical Licensing Examination or the National Board of Osteopathic Medical Examiners Examination or its successor examination.

"2. Applicants by endorsement licensed in another state, the District of Columbia, a territory of the United States, or a province of Canada who completed any one of the licensing examinations listed above prior to January 1, 2000, are eligible for licensure upon proof of a passing score of such examination.

"3. Applicants by endorsement licensed in another state or the District of Columbia, or a territory of the United States, or a province of Canada whose licensing examination was completed after January 1, 2000, shall achieve a passing score, as determined by the Board of Medical Examiners, on the United States Medical Licensing Examination or the National Board of Osteopathic Medical Examiners Examination or its successor examination.

"4. The board may establish by regulation acceptable combinations of the Federation Licensing Examination, National



1 Board of Medical Examiners Examination, and/or United States  
2 Medical Licensing Examination through January 1, 2000, in  
3 satisfaction of the examination requirement for a certificate  
4 of qualification.

5 "(4) APPLICATION AND EXAMINATION FEE REQUIREMENT.

6 Payment in advance to the board of the required application  
7 fee or examination fee, or both, in amounts as established in  
8 the regulations of the board.

9 "(5) ADDITIONAL REQUIREMENTS FOR EXAMINATION FOR  
10 CERTAIN APPLICANTS.

11 "a. All applicants who have not passed a written  
12 state licensing examination, the examination given by the  
13 National Board of Medical Examiners, the United States Medical  
14 Licensing Examination, the National Board of Osteopathic  
15 Medical Examiners Examination, the examination given by the  
16 Licensing Medical Council of Canada, the Special Purpose  
17 Examination, or the Federation Licensing Examination within 10  
18 years immediately preceding the date of the application shall  
19 either:

20 "1. Achieve a passing score on the Special Purpose  
21 Examination.

22 "2. Be certified by or achieve a passing score on a  
23 recertification examination given by one of the specialty  
24 boards approved by the American Board of Medical Specialties  
25 or one of the specialty boards approved by the American

Osteopathic Association within 10 years immediately preceding the date of the application.

"b. All applicants who graduated from a college of medicine not accredited by the Liaison Committee of Medical Education or the American Osteopathic Association shall achieve a certification given by the Education Council for Foreign Medical Graduates.

"(b) Administration of examinations by the board.

"(1) Applicants for a certificate of qualification who are applying for initial licensure in the State of Alabama, and who meet all qualifications for administration of Step 3 of the United States Medical Licensing Examination are eligible to take the United States Medical Licensing Examination in Alabama.

"(2) The following individuals are eligible to take the Special Purpose Examination in Alabama:

"a. Applicants who are applying for licensure in Alabama who are required to take the examination under another provision of this section.

"b. Individuals required to take the examination pursuant to an order or directive of the State Board of Medical Examiners or the Medical Licensure Commission.

"c. Any physician licensed in Alabama who is required to take the examination in connection with an application for licensure in another state.

"(c) Administrative requirements for examination by the board.

"(1) Each applicant shall pay an examination fee as established by the board for each administration of the required examination. The examination fee is not returnable to an unsuccessful applicant.

"(2) Examinations administered by the board may be given in Montgomery or at any other location determined by the board.

"(3) Applicants who are required to take the Special Purpose Examination or the United States Medical Licensing Examination administered by the board shall, in addition to the other requirements of this section, be eligible to sit for and take the examination under the rules established by the organization which created the examination.

"(4) The board may enter into personal service contracts with individuals, firms, or corporations for the administration of any examination required by this section.

"(5) The board shall keep complete records of all examinations conducted, giving the name, age, residence, college, date of graduation of the applicant examined, and the results of the examination. These records shall be open to public inspection.

"(6) The board shall establish by rule or regulation the passing score for all examinations administered by it under this section.

"(d) Grounds for denial of a certificate of qualification. The board may deny an application for a certificate of qualification on any of the following grounds:

"(1) Failure of the applicant to achieve a passing score on any examination required under this section.

"(2) Failure of the applicant to complete the application form as specified by the board or to provide additional information requested by the board in connection with the application.

"(3) A finding that the applicant has submitted or caused to be submitted false, misleading, or untruthful information to the board in connection with an application for a certificate of qualification.

"(4) Failure to appear before the board or a committee of the board if formally requested to appear in connection with an application for a certificate of qualification.

"(5) A finding by the board that the applicant has committed any of the acts or offenses constituting grounds to discipline the licensee to practice medicine in this state pursuant to, but not limited to, Sections 16-47-128, 34-24-360, and 34-24-57.

1           "(e) Withdrawal of application for certificate of  
2           qualification and certificate of qualification.

3           "(1) An applicant for a certificate of qualification  
4           shall have six months from the date the initial signed  
5           application form is received by the board to complete the  
6           application, except that an applicant for a certificate of  
7           qualification who is required to pass an examination as part  
8           of the application process shall have 12 months from the date  
9           the initial signed application form is received to complete  
10          the application. After the expiration of the deadline for  
11          completing an application established in the preceding  
12          sentence, an incomplete application shall be withdrawn by the  
13          board.

14          "(2) A certificate of qualification issued by the  
15          board shall be withdrawn by the board after a period of six  
16          months from the date of issuance unless the applicant has  
17          filed an application for a license to practice medicine with  
18          the Medical Licensure Commission of Alabama and paid the  
19          required fee.

20          "(3) If either an application for a certificate of  
21          qualification or a certificate of qualification is withdrawn  
22          by the board, the applicant, to reapply, shall submit a new  
23          application form including a new application fee."

1           Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.

*Lucy Baxley*

President and Presiding Officer of the Senate

*Art. Huff*

Speaker of the House of Representatives

SB355

Senate 01-APR-04

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee  
Secretary

House of Representatives  
Passed: 27-APR-04

By: Senator Lindsey

APPROVED 5-3-04

TIME 11:08 am

*Bob Riley*  
GOVERNOR

Alabama Secretary Of State

Act Num....: 2004-374  
Bill Num...: S-355

Recv'd 05/03/04 02:24pmHMB

**Code of AL 1975, Title 20 ,Chapter 2. Controlled Substances**

**ARTICLE 1. GENERAL PROVISIONS.**

**§ 20-2-1. Short title.** [Annotations](#)

This chapter may be cited as the Alabama Uniform Controlled Substances Act.  
(Acts 1971, No. 1407, p. 2378, § 511.)

**§ 20-2-2. Definitions.** [Historical Notes](#) [References](#) [Annotations](#)

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Administer. The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

a. A practitioner or, in his or her presence, his or her authorized agent.

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) Agent. An authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) Certifying boards. The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry, and the State Board of Veterinary Medical Examiners.

(4) Controlled substance. A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.

(5) Counterfeit substance. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) Deliver or delivery. The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(7) Dispense. To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) Dispenser. A practitioner who dispenses.

(9) Distribute. To deliver other than by administering or dispensing a controlled substance.



(10) Distributor. A person who distributes.

(11) Drug.

a. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.

b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals.

c. Substances (other than food) intended to affect the structure or any function of the body of man or animals.

d. Substances intended for use as a component of any article specified in paragraphs a, b, or c of this subdivision. Such term does not include devices or their components, parts, or accessories.

(12) Immediate precursor. A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) Manufacture. The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

b. By a practitioner or by his or her authorized agent under his or her supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(14) Marihuana. All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) Narcotic drug. Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) Opiate. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) Opium poppy. The plant of the species *Papaver somniferum* L., except its seeds.

(18) Person. Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) Poppy straw. All parts, except the seeds, of the opium poppy, after mowing.

(20) Practitioner.

a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(21) Production. The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) State. When applied to a part of the United States, such term includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) Ultimate user. A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

(Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

**§ 20-2-3. Immunity of persons reporting suspected use, etc., of controlled substance by minor child.**

elementary and secondary schools shall be immune from civil liability for

communicating information to the parents of a minor child, law enforcement officers, or health care providers concerning the suspected use, possession, sale, distribution of any controlled substance as defined in Chapter 2 of Title 20, by any minor child as defined by law. Notwithstanding the foregoing, this immunity shall not apply if said person communicated such information maliciously and with knowledge that it was false. (Acts 1985, No. 85-239, p. 138.)

## ARTICLE 2. STANDARDS AND SCHEDULES.

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### § 20-2-20. Administration of chapter. [Historical Notes](#) [Annotations](#)

(a) The State Board of Health, unless otherwise specified, shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the State Board of Health. In making a determination regarding a substance, the State Board of Health shall consider all of the following:

- (1) The actual or relative potential for abuse.
- (2) The scientific evidence of its pharmacological effect, if known.
- (3) The state of current scientific knowledge regarding the substance.
- (4) The history and current pattern of abuse.
- (5) The scope, duration, and significance of abuse.
- (6) The risk to the public health.
- (7) The potential of the substance to produce psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(b) After considering the factors enumerated in subsection (a), the State Board of Health shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, the State Board of Health shall similarly control the substance under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that 30-day period, the State Board of Health objects to inclusion, rescheduling, or deletion. In that case, the State Board of Health shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the State Board of Health shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the State Board of Health, control under this chapter is stayed until the State Board of Health publishes its decision.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt, beverages, or tobacco.

(e) The State Board of Health shall exclude any nonnarcotic substance from a

schedule if such substance, under the federal Food, Drug and Cosmetic Act, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and the law of this state may be lawfully sold over the counter without a prescription.

(Acts 1971, No. 1407, p. 2378, § 201; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

**§ 20-2-21. Nomenclature of controlled substances in schedules. [Annotations](#)**

The controlled substances listed or to be listed in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29 and 20-2-31 are included by whatever official, common, usual, chemical or trade name designated.

(Acts 1971, No. 1407, p. 2378, § 202.)

**§ 20-2-22. Schedule I -- Standards for compilation. [Annotations](#)**

The State Board of Health shall place a substance in schedule I if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(Acts 1971, No. 1407, p. 2378, § 203.)

**§ 20-2-23. Schedule I -- Listing of controlled substances. [Annotations](#)**

The controlled substances listed in this section are included in schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol;
- b. Allylprodine;
- c. Alphacetylmethadol;
- d. Alphameprodine;
- e. Alphamethadol;
- f. Benzethidine;
- g. Betacetylmethadol;
- h. Betameprodine;
- i. Betamethadol;
- j. Betaprodine;
- k. Clonitazene;
- l. Dextromoramide;
- m. Dextrophan;
- n. Diampromide;
- o. Diethylthiambutene;
- p. Dimenoxadol;
- q. Dimepheptanol;
- r. Dimethylthiambutene;

- s. Dioxaphetyl butyrate;
- t. Dipipanone;
- u. Ethylmethylthiambutene;
- v. Etonitazene;
- w. Etoxeridine;
- x. Furethidine;
- y. Hydroxypethidine;
- z. Ketobemidone;
- aa. Levomoramide;
- bb. Levophenacymorphan;
- cc. Morpheridine;
- dd. Noracymethadol;
- ee. Norlevorphanol;
- ff. Normethadone;
- gg. Norpipanone;
- hh. Phenadoxone;
- ii. Phenampromide;
- jj. Phenomorphan;
- kk. Phenoperidine;
- ll. Piritramide;
- mm. Proheptazine;
- nn. Properidine;
- oo. Racemoramide;
- pp. Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine;
- b. Acetyldihydrocodeine;
- c. Benzylmorphine;
- d. Codeine methylbromide;
- e. Codeine-N-Oxide;
- f. Cyprenorphine;
- g. Desomorphine;
- h. Dihydromorphine;
- i. Etorphine;
- j. Heroin;
- k. Hydromorphenol;
- l. Methyldesorphine;
- m. Methyldihydromorphine;
- n. Morphine methylbromide;
- o. Morphine methylsulfonate;
- p. Morphine-N-Oxide;
- q. Myrophine;
- r. Nicocodeine;
- s. Nicomorphine;

- t. Normorphine;
- u. Pholcodine;
- v. Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. 3,4-methylenedioxy amphetamine;
- b. 5-methoxy-3,4-methylenedioxy amphetamine;
- c. 3,4,5-trimethoxy amphetamine;
- d. Bufotenine;
- e. Diethyltryptamine;
- f. Dimethyltryptamine;
- g. 4-methyl-2,5-dimethoxy amphetamine;
- h. Ibogaine;
- i. Lysergic acid diethylamide;
- j. Marihuana;
- k. Mescaline;
- l. Peyote;
- m. N-ethyl-3-piperidyl benzilate;
- n. N-methyl-3-piperidyl benzilate;
- o. Psilocybin;
- p. Psilocyn;
- q. Tetrahydrocannabinols.

(Acts 1971, No. 1407, p. 2378, § 204.)

#### **§ 20-2-24. Schedule II -- Standards for compilation. [Annotations](#)**

The State Board of Health shall place a substance in schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

(Acts 1971, No. 1407, p. 2378, § 205.)

#### **§ 20-2-25. Schedule II -- Listing of controlled substances. [Annotations](#)**

The controlled substances listed in this section are included in schedule II:

(1) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

- a. Opium and opiate and any salt, compound, derivative or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative or preparation thereof which is

chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Alphaprodine;

b. Anileridine;

c. Bezitramide;

d. Dihydrocodeine;

e. Diphenoxylate;

f. Fentanyl;

g. Isomethadone;

h. Levomethorphan;

i. Levorphanol;

j. Metazocine;

k. Methadone;

l. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

m. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

n. Pethidine;

o. Pethidine -- Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

p. Pethidine -- Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

q. Pethidine -- Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

r. Phenazocine;

s. Piminodine;

t. Racemethorphan;

u. Racemorphan.

(Acts 1971, No. 1407, p. 2378, § 206.)

#### **§ 20-2-26. Schedule III -- Standards for compilation.**

place a substance in Schedule III if it finds that:

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(Acts 1971, No. 1407, p. 2378, § 207.)

**§ 20-2-27. Schedule III -- Listing of controlled substances. Annotations**

(a) The controlled substances listed in this section are included in schedule III:

(1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers and salts of its optical isomers;
- b. Phenmetrazine and its salts;
- c. Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers;
- d. Methylphenidate.

(2) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- b. Chlorhexadol;
- c. Glutethimide;
- d. Lysergic acid;
- e. Lysergic acid amide;
- f. Methyprylon;
- g. Phencyclidine;
- h. Sulfondiethylmethane;
- i. Sulfonethylmethane;
- j. Sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

- a. Not more than 1.8 grams of codeine or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- b. Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- c. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
- d. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- e. Not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- f. Not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;



g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

h. Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(b) The State Board of Health may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subdivisions (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(Acts 1971, No. 1407, p. 2378, § 208.)

#### **§ 20-2-28. Schedule IV -- Standards for compilation.**

place a substance in schedule IV if it finds that:

(1) The substance has a low potential for abuse relative to substances in schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

(Acts 1971, No. 1407, p. 2378, § 209.)

#### **§ 20-2-29. Schedule IV -- Listing of controlled substances. [Annotations](#)**

(a) The controlled substances listed in this section are included in schedule IV:

(1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- a. Barbital;
- b. Chloral betaine;
- c. Chloral hydrate;
- d. Ethchlorvynol;
- e. Ethinamate;
- f. Methohexital;
- g. Meprobamate;
- h. Methylphenobarbital;
- i. Paraldehyde;
- j. Petrichloral;
- k. Phenobarbital.

(b) The state board of health may except by rule any compound, mixture or preparation containing any depressant substance listed in subsection (a) from the

application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.  
(Acts 1971, No. 1407, p. 2378, § 210.)

**§ 20-2-30. Schedule V -- Standards for compilation.**

place a substance in schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

(Acts 1971, No. 1407, p. 2378, § 211.)

**§ 20-2-31. Schedule V -- Listing of controlled substances. [Annotations](#)**

The controlled substances listed in this section are included in schedule V:

(1) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;
- b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams;
- c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams;
- d. Not more than 2.5 milligrams of diphenozylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(Acts 1971, No. 1407, p. 2378, § 212.)

**§ 20-2-32. Revision and republication of schedules. [Annotations](#)**

The State Board of Health shall revise and republish the schedules annually.

(Acts 1971, No. 1407, p. 2378, § 213.)

**ARTICLE 3. REGULATION OF MANUFACTURE AND DISTRIBUTION.**

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**§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.**

promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards. (Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

**§ 20-2-51. Registration of persons manufacturing, distributing or dispensing controlled substances -- General requirements. [References](#) [Annotations](#)**

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses

controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.  
(Acts 1971, No. 1407, p. 2378, § 302.)

**§ 20-2-52. Registration of persons manufacturing, distributing or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration. [References](#)**

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;
- (6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and
- (7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

(Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

**§ 20-2-53. Registration of persons manufacturing, distributing or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay.** [Historical Notes](#) [References](#) [Annotations](#)

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board. (Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, p. 359, § 3.)

**§ 20-2-54. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and**

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
  2. Hyperkinesis.
  3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
  4. Epilepsy.
  5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
  6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;
- or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved

by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, 3rd Sp. Sess., p. 873, § 2; Act 2003-9997, § .)

#### **§ 20-2-54.1. Rules and regulations.**

Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

#### **§ 20-2-55. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause.**

order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is

an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.

(Acts 1971, No. 1407, p. 2378, § 305.)

#### **§ 20-2-56. Maintenance of records and inventories by registrants generally.**

##### [Annotations](#)

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.

(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

#### **§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant.** [Annotations](#)

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

(Acts 1971, No. 1407, p. 2378, § 307.)

#### **§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies.** [Historical Notes](#) [References](#) [Annotations](#)

(a) A pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long term care



facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1.)

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

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**§ 20-2-70. Prohibited acts A. Repealed by Acts 1987, No. 87-603, p. 1047, § 12, effective October 21, 1987. § 20-2-71. Prohibited acts B. [Annotations](#)**

(a) It is unlawful for any person:

(1) Who is subject to Article 3 of this chapter to distribute or dispense a controlled substance in violation of Section 20-2-58;

(2) Who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; provided, however, that upon the first conviction of a violator under this provision said violator shall be guilty of a Class A misdemeanor. Subsequent convictions shall subject the violator to the felony penalty provision set forth in subsection (b) of this section.

(4) To refuse an entry into any premises for any inspection authorized by this chapter; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a Class B felony.

(Acts 1971, No. 1407, p. 2378, § 402; Acts 1987, No. 87-603, p. 1047, § 6.)

**§ 20-2-72. Prohibited acts C. [Annotations](#)**

(a) It is unlawful for any person:

(1) To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by Section 20-2-57;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from any application, report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter; or

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a Class B felony, except that any person who violates subdivision (a)(3) of this section is guilty of a Class C felony.

(Acts 1971, No. 1407, p. 2378, § 403; Acts 1987, No. 87-603, p. 1047, § 7.)

**§ 20-2-73. Transferred to § 13A-12-215 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. § 20-2-74. Prescription, administration, etc., of controlled substances by practitioners of veterinary medicine for use of human beings or by practitioners of dentistry for persons not under treatment in regular practice of profession. [Annotations](#)**

(a) It shall be unlawful for any practitioner of dentistry to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for any person not under his treatment in his regular practice of his profession or for any practitioner of veterinary medicine to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for the use of human beings; provided, however, that the provisions of this section shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of substances enumerated in schedules I through V who is under his professional care such substances as he may deem necessary for their treatment, when

such prescriptions are not given or substances furnished for the purpose of maintaining addiction or abuse.

(b) Any person who violates this section shall be guilty of a Class B felony.  
(Acts 1971, No. 1407, p. 2378, § 505; Acts 1987, No. 87-603, p. 1047, § 9.)

**§ 20-2-75. Repealed by Acts 1986, No. 86-425, § 4, effective April 29, 1986. § 20-2-75.1. Transferred to § 13A-12-260 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. § 20-2-76. Penalties for second or subsequent offenses; when offense deemed second or subsequent offense. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. § 20-2-77. Conviction or acquittal under federal law or state law to bar prosecution for same violation under chapter. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. § 20-2-78. Penalties imposed for violations of chapter in addition to other civil or administrative penalties or sanctions.**

is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law.

(Acts 1971, No. 1407, p. 2378, § 404.)

**§ 20-2-79. Transferred to § 13A-12-250 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. ARTICLE 4A. TRAFFICKING IN ILLEGAL DRUGS.**

**§§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess. No. 88-918, p. 512, § 2, effective September 30, 1988. §§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess. No. 88-918, p. 512, § 2, effective September 30, 1988. ARTICLE 5. ENFORCEMENT.**

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## ANNOTATIONS

## CASENOTES

**Cited** in Jones v. State, 432 So.2d 19 (Ala.Crim.App.1983).


Burden of proof 2 ..... enter p

Prima facie case 1 ..... enter p

### 1. Prima facie case

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001). Controlled Substances 184

### 2. Burden of proof

State seeking civil forfeiture of currency had the burden of proving that the currency was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. Harris v. State, 821 So.2d 177 (Ala.2001). Controlled Substances  165

**§ 20-2-90. State Board of Pharmacy, Department of Public Safety, etc., to enforce chapter; drug inspectors to meet minimum standards.** [Historical Notes](#)  
[Annotations](#)

(a) The State Board of Pharmacy and its drug inspectors shall enforce all provisions of this chapter. The agents and officers of this Department of Public Safety, the drug and narcotic agents and inspectors of the State Board of Health, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and all peace officers of the state and all prosecuting attorneys are also charged with the enforcement of this chapter. The agents and officers of the Department of Public Safety, the drug inspectors of the State Board of Pharmacy, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and the drug and narcotic agents and inspectors of the State Board of Health shall have the powers of peace officers in the performance of their duties to:

(1) Make arrests without warrant for any offense under this chapter committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.

(2) Make seizures of property pursuant to this chapter.

(3) Carry firearms in the performance of their official duties.

(b) In addition to the requirements of subsection (a), drug inspectors of the State Board of Pharmacy shall, beginning October 1, 1993, meet the minimum standards required of peace officers in this state.

(Acts 1971, No. 1407, p. 2378, § 501; Acts 1981, No. 81-657, p. 1073; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-671, p. 1209, § 3.)

**§ 20-2-91. Inspection of stocks of controlled substances and prescriptions, orders, etc., required by chapter; disclosure of information as to prescriptions, orders, etc., by enforcement personnel. [References](#)**

(a) Prescriptions, orders and records required by this chapter and stocks of controlled substances enumerated in schedules I, II, III, IV and V shall be open for inspection only to federal, state, county and municipal officers, the investigators of the board of dental examiners, and the agents and officers of the department of public safety whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(b) No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party. (Acts 1971, No. 1407, p. 2378, § 502; Acts 1987, No. 87-578, p. 923, § 1.)

**§ 20-2-92. Injunctions. [References](#)**

(a) The circuit courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or temporary restraining order under this section. (Acts 1971, No. 1407, p. 2378, § 503.)

**§ 20-2-93. Forfeitures; seizures. [Historical Notes](#) [References](#) [Annotations](#)**

(a) The following are subject to forfeiture:

(1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;

(3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it;

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and

(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs;

and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure.

Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

(Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472.)

## **ARTICLE 6. THERAPEUTIC RESEARCH.**



**§ 20-2-110. Short title.**

Therapeutic Research Act."

(Acts 1979, No. 79-472, p. 870, § 1.)

**§ 20-2-111. Legislative findings; cannabis research. [Annotations](#)**

The Legislature finds that recent research has shown that the use of cannabis may alleviate nausea and ill-effects of cancer chemotherapy, and may alleviate the ill-effects of glaucoma. The Legislature further finds that there is a need for further research and experimentation with regard to the use of cannabis under strictly controlled circumstances. It is for these purposes that the Controlled Substances Therapeutic Research Act is hereby established.

(Acts 1979, No. 79-472, p. 870, § 2.)

**§ 20-2-112. Definitions. [Historical Notes](#)**

As used in this article the following words, unless the context clearly indicates the contrary, shall have the following meanings:

(1) Controlled substance. The same as is defined in subdivision (5) of Section 20-2-2, as amended;

(2) Cannabis. The same as those substances defined in subdivision (15) of Section 20-2-2, as amended, and particularly those substances defined as tetrahydrocannabinols, or a chemical derivative thereof;

(3) Practitioner. A physician licensed to practice medicine in this state and particularly as herein enumerated.

(Acts 1979, No. 79-472, p. 870, § 3.)

**§ 20-2-113. Controlled Substances Therapeutic Research Program -- Established; review committee; rules and regulations; formulation with federal agencies.**

is hereby established by the State Board of Medical Examiners the Controlled Substances Therapeutic Research Program. The board shall administer the program by a review committee. The board shall promulgate such rules and regulations as are necessary for the proper administration and implementation of the program. Such promulgations shall be formulated to consider those pertinent rules and regulations promulgated by the Federal Drug Enforcement Agency, Food and Drug Administration and the National Institute on Drug Abuse.

(Acts 1979, No. 79-472, p. 870, § 4.)

**§ 20-2-114. Controlled Substances Therapeutic Research Program -- Limited to cancer chemotherapy and glaucoma patients; certification; exemption from prosecution.**



Therapeutic Research Program shall be limited to cancer chemotherapy patients and glaucoma patients, who are certified to the review committee by an authorized practitioner as being in such medical condition necessary for the treatment of glaucoma, or the side effects of chemotherapy in cancer patients; such authorization shall be upon such terms and conditions as may be consistent with the public health and safety. To the extent of the applicable authorization, persons are exempt from prosecution in this state for possession, production, manufacture or delivery of cannabis.  
(Acts 1979, No. 79-472, p. 870, § 5.)

**§ 20-2-115. Composition of review committee. [References](#)**

The review committee shall consist of: (a) one physician licensed to practice medicine in this state and certified by the American Board of Ophthalmology; (b) one physician licensed to practice medicine in this state, certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology; (c) one physician licensed to practice medicine in this state, certified in the specialty of pediatrics and also certified in the subspecialty of pediatrics oncology; (d) one physician licensed to practice medicine in this state, certified in the specialty of gynecology and also certified in the subspecialty of gynecological oncology; (e) one physician licensed to practice medicine in this state, certified in the specialty of radiology and also certified in the subspecialty of radiation oncology; and (f) the director of the Comprehensive Cancer Center of the University of Alabama in Birmingham.  
(Acts 1979, No. 79-472, p. 870, § 6.)

**§ 20-2-116. Certification in subspecialty of oncology required; certification by State Board of Medical Examiners; recertification.**

medicine as prescribed in Section 20-2-115 and specifically certified by the State Board of Medical Examiners to dispense cannabis under the provisions of this article, shall be practitioners hereunder. Each practitioner shall make application for recertification every three years.

(Acts 1979, No. 79-472, p. 870, § 7; Acts 1981, No. 81-506, p. 869, § 1.)

**§ 20-2-117. Contracts for receipt of cannabis; Board of Medical Examiners to**

**promulgate guidelines, rules and regulations.**

may apply to contract with the National Institute of Drug Abuse for receipt of cannabis pursuant to the regulations promulgated by the National Institute on Drug Abuse, the Food and Drug Administration and the Drug Enforcement Administration. The board may formulate and promulgate such guidelines as are necessary for dispensing cannabis consistent with the public health and safety and under strictly controlled circumstances. The board further may establish the rules and regulations requiring accurate reporting and accountability by each practitioner to the board and any federal agency as required by law.

(Acts 1979, No. 79-472, p. 870, § 8; Acts 1981, No. 81-506, p. 869, § 2.)

**§ 20-2-118. Annual reports to Governor and Legislature.**

fifth day of the Regular Session of the Legislature the State Board of Medical Examiners, in conjunction with the board's review committee, shall report their findings and recommendations to the governor, the president of the Senate and the Speaker of the House of Representatives, regarding the effectiveness of the controlled substances.

(Acts 1979, No. 79-472, p. 870, § 9.)

**§ 20-2-119. Enumeration as schedule I or II substance inapplicable.**

of cannabis, tetrahydrocannabinols or a chemical derivative thereof as a schedule I or II controlled substance under Article 2 of Chapter 2 of Title 20, as amended, does not apply to the use of such drugs or chemical derivatives thereof pursuant to the provisions of this article.

(Acts 1979, No. 79-472, p. 870, § 10.)

**§ 20-2-120. Penalties.**

cannabis or any of its derivatives for reasons other than outlined in this article upon conviction thereof shall be guilty of a felony and shall be punished as provided in Section 13A-12-211.

(Acts 1979, No. 79-472, p. 870, § 11.)

**ARTICLE 7. IMITATION CONTROLLED SUBSTANCES.**

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**§ 20-2-140. Short title.**

Controlled Substances Act.

(Acts 1982, No. 82-426, p. 670, § 1.)

**§ 20-2-141. Definitions.**

following meanings, respectively, unless the context clearly indicates otherwise:

(1) Controlled substance. A substance as defined in Section 20-2-2.

(2) Imitation controlled substance. A substance, other than a legend controlled drug, that is not a controlled substance, which by dosage unit appearance (including color, size, shape and markings), and by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In the cases where the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example as in the case of a powder or liquid), the court or authority concerned should consider, in addition to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

a. Statements made by the owner or anyone else in control of the substance concerning the nature of the substance, its use or effect.

b. Statements made to the recipient that the substance may be resold for an inordinate profit.

c. Whether the substance is packaged in a manner normally used for illicit controlled substances.

d. Evasive tactics or actions utilized by the owner or person in control of this substance to avoid detection by law enforcement authorities.

e. Prior convictions, if any, of an owner or anyone in control of the substance, under state or federal law related to controlled substances or fraud.

f. The proximity of the substances to controlled substances.

(3) Distribute. The actual, constructive or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

(4) Manufacture. The production, preparation, compounding, processing, encapsulating, packaging, or repackaging, labeling or relabeling of an imitation controlled substance.

(Acts 1982, No. 82-426, p. 670, § 2; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

#### **§ 20-2-142. Legislative intent.**

merchandising of the "imitation controlled substance" or "lookalike drug" from the street corners, school yards, and campuses of our state, not to interfere with the legitimate distribution of "over the counter" formulations used for the treatment of illness dispensed or sold by licensed practitioners.

(Acts 1982, No. 82-426, p. 670, § 6.)

#### **§ 20-2-143. Manufacture, distribution, possession, or advertisement of imitation controlled substances prohibited; penalties; immunity of certain persons from liability.**

distribute, or possess with intent to distribute or sell an imitation controlled substance.

Any person who violates this subsection shall be guilty of a Class A misdemeanor under Title 13A.

(b) *Distribution to a minor.* -- Any person 18 years of age or older who violates subsection (a) of this section by distributing or selling an imitation controlled substance to a person under 18 years of age shall be guilty of a Class C felony under Title 13A.

(c) *Possession.* -- It is unlawful for any person to use or possess with intent to use, an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class C misdemeanor under Title 13A.

(d) *Advertisement.* -- It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution or sale of an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class B misdemeanor under Title 13A.

(e) *Immunity.* -- No civil or criminal liability shall be imposed by virtue of this article on any person registered under Chapter 2 of Title 20 who manufactures, distributes, or possesses a placebo, or investigational new drug in the course of professional practice or research.

(Acts 1982, No. 82-426, p. 670, § 3.)

#### **§ 20-2-144. Exceptions.**

that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

(Acts 1982, No. 82-426, p. 670, § 7.)

### **ARTICLE 8. SOLICITATION, ATTEMPT AND CONSPIRACY TO COMMIT CONTROLLED SUBSTANCE CRIME.**

**§§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. §§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. ARTICLE**

### **9. PRECURSOR CHEMICALS.**

#### **§ 20-2-180. Definitions.** [Historical Notes](#)

As used in this article and unless otherwise specified, the following terms are defined as follows:

- (1) Board or Board of Pharmacy. The Alabama State Board of Pharmacy.
- (2) Listed precursor chemical. A chemical substance specifically designated as such by the Alabama State Board of Pharmacy, that, in addition to legitimate uses, is used in the unlawful manufacture of a controlled substance or controlled substances.
- (3) Person. Any individual, corporation, partnership, association, or other entity which manufactures, sells, transfers, or possesses a listed precursor chemical.

(Acts 1991, No. 91-589, p. 1085, § 1; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

**§ 20-2-181. Board to designate by rule listed precursor chemicals; interim list established.**

designate by rule listed precursor chemicals.

(b) The Board of Pharmacy may subsequently by rule add chemicals as listed precursor chemicals following the criteria set forth in subdivision (2) of Section 20-2-180, and may also by rule delete any substance previously named as a listed precursor chemical. In no event shall a chemical also be designated as a listed precursor chemical if it has been determined to be a controlled substance or an immediate precursor chemical pursuant to the Alabama Uniform Controlled Substances Act, Section 20-2-1 et seq.

(c) If any chemical is designated or deleted as a listed precursor chemical under federal law and notice thereof is given to the Board of Pharmacy, the board shall similarly list or delete the substance under this article after the expiration of 30 days from publication in the federal register of a final rule or order designating or deleting such substance as a listed precursor chemical, unless, within 30 days from publication in the federal register of the final rule or order, the board objects to the designation or deletion. In that case, the board shall publish the reasons for objection in the Alabama Administrative Monthly and shall afford all interested parties an opportunity to submit written comments and to be heard. At the conclusion of the hearing and the comment period, the State Board of Pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the designation or deletion by the board, the designation or deletion is stayed until the board publishes its decision. Notwithstanding the provisions of the Alabama Administrative Procedure Act, Sections 41-22-1 through 41-22-27, no further rulemaking or administrative proceedings shall be required of the board with respect to the designation or deletion of substances similarly designated or deleted under federal law.

(d) Until the Board of Pharmacy adopts a rule designating listed precursor chemicals, as required by subsection (a), the following chemicals or substances are hereby deemed listed precursor chemicals:

- (1) Acetic anhydride;
- (2) Anthranilic acid and its salts;
- (3) Benzyl cyanide;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Ergonovine and its salts;
- (6) Ergotamine and its salts;
- (7) Hydriodic acid;
- (8) Isosafrol;
- (9) Methylamine;
- (10) N-Acetylanthranilic acid and its salts;
- (11) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;

- (12) Phenylacetic acid and its salts;
  - (13) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
  - (14) Piperidine and its salts;
  - (15) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
  - (16) Safrole; and
  - (17) 3,4-Methylenedioxyphenyl-2-propanone.
- (Acts 1991, No. 91-589, p. 1085, § 2.)

**§ 20-2-182. License required for furnishing listed precursor chemical; licensing procedure; content of license; record of transactions.**

wholesaler, retailer, or other person who sells, transfers, manufactures, purchases for resale, or otherwise furnishes any listed precursor chemical defined in Section 20-2-181 must first obtain a license annually from the Board of Pharmacy.

(b) The procedure for obtaining a license to sell, transfer, manufacture, purchase for resale, or otherwise furnish a listed precursor chemical shall be as follows:

- (1) Obtain an application from the Board of Pharmacy;
- (2) Submit the application to the Board of Pharmacy;
- (3) Demonstrate a legitimate reason to sell, transfer, or otherwise furnish listed precursor chemicals.

(c) The content of the application for a license shall include, but not be limited to, the following information:

- (1) Name of business;
- (2) Address of business other than a post office box number;
- (3) Phone number of business;
- (4) Names and addresses of business owners;
- (5) Location of storage facility;
- (6) Identification of listed precursor chemicals to be sold; and
- (7) Criminal history of applicant.

(d) A licensee shall make an accurate and legible record of any transaction of listed precursor chemicals and maintain such record together with the following records for a period of at least two years:

- (1) Inventory on hand;
- (2) Purchase receipts;
- (3) Manufacturing records including the date and quantity of any listed precursor chemicals manufactured, the quantity of listed precursor chemicals used in manufacturing any other substance or product, and the inventory on hand of listed precursor chemicals after the manufacturing of any other substance or product;
- (4) Copies of the Board of Pharmacy licenses or permits;

(5) Records of substance disposal.  
(Acts 1991, No. 91-589, p. 1085, § 3.)

**§ 20-2-183. Permit for possession; requirements to receive permit; copies.**

person having a legitimate need for using a listed precursor chemical defined in Section 20-2-181, shall apply in person to the board of pharmacy for a permit to possess such chemical each time said chemical is obtained.

(b) The following must be submitted in person to the Board of Pharmacy to receive a permit for possession of listed precursor chemicals:

(1) A driver's license number or other personal identification certificate number, date of birth, residential or mailing address, other than a post office box number, and a driver's license or personal identification card issued by the Department of Public Safety which contains a photograph of the recipient;

(2) In the event the applicant is a corporation, the information in this section shall be required of the person making application for the permit. In addition, the person making application for the permit on behalf of a corporation shall disclose his relationship to the corporation;

(3) The make, model, model year, state where licensed, and license number of the motor vehicle owned and operated by the recipient;

(4) The serial number of the permit issued in the name of the recipient by the Board of Pharmacy pursuant to this section, which shall be obtained from personal observation of the permit;

(5) A complete description of how the chemical is to be used; and

(6) The location where the chemical is to be stored and used.

(c) The permit shall consist of three parts, including:

(1) The original to be retained by the Board of Pharmacy;

(2) A copy to be retained by the manufacturer, wholesaler, retailer, or other person furnishing listed precursor chemicals; and

(3) A copy to be attached to the container of the listed precursor chemical and to be kept with the chemicals at all times.

(Acts 1991, No. 91-589, p. 1085, § 4.)

**§ 20-2-184. Denial, suspension or revocation of license.**

pursuant to Section 20-2-182 or 20-2-183, shall be denied, suspended, or revoked by the Board of Pharmacy upon finding that the license or permit holder has:

(1) Furnished false or fraudulent material information in any application filed under this article;

(2) Been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(4) Violated the provisions of Chapter 23 of Title 34; or

(5) Failed to maintain effective controls against the diversion of said precursors to unauthorized persons or entities.

(Acts 1991, No. 91-589, p. 1085, § 5.)

**§ 20-2-185. Reporting transactions -- Board to supply form.**

sells, transfers, purchases for resale, or otherwise furnishes to a person in this state a listed precursor chemical shall submit a report of the transaction on a form obtained from the Board of Pharmacy that includes the information required by Section 20-2-183.

(b) The Board of Pharmacy shall supply, upon the request of any manufacturer, wholesaler, retailer, or other person who sells, transfers, purchases for resale, or otherwise furnishes a listed precursor chemical a form for the submission of:

- (1) The report required by subsection (a);
- (2) The name and measured amount of the listed precursor chemical delivered;
- (3) Such other information as the board may require pursuant to agency rule of the Board of Pharmacy.

(Acts 1991, No. 91-589, p. 1085, § 6.)

**§ 20-2-186. Procedure upon discovery of loss or theft of chemicals -- Records -- Audits and inspections of records.**

discovers a loss or theft of, or disposes of a chemical listed in Section 20-2-181 shall:

(1) Submit a report of the loss, theft, or disposal to the Board of Pharmacy no later than the third business day after the date the manufacturer, wholesaler, retailer, or other person discovers the loss or theft, or after the actual disposal; and

(2) Include the amount of loss, theft, or disposal in the report. Any disposal of listed precursor chemicals must be done in accordance with the rules and regulations of the United States Environmental Protection Administration and shall be performed at the expense of the permit or license holder.

(b) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses, uses, or otherwise furnishes any listed precursor chemical shall:

(1) Maintain records as specified in Section 20-2-182, or as prescribed by the rule of the Board of Pharmacy;

(2) Permit law enforcement authorities to conduct on-site audits, inspections or inventories, and inspect all records made in accordance with this article at any reasonable time; and

(3) Cooperate with the audit, inspection or inventory, or copying of any records.

(Acts 1991, No. 91-589, p. 1085, § 7.)

**§ 20-2-187. Adoption of rules; administrative fees authorized.**

Pharmacy may adopt reasonable rules to effectuate the provisions of this article. The board is further authorized to charge reasonable fees to defray expenses incurred in issuing any licenses or permits or maintaining any records or forms required by this



article and in the administration of the provisions of this article. Any fees to defray expenses as set forth above or in administering the provisions of this article shall be retained by the Board of Pharmacy.

(Acts 1991, No. 91-589, p. 1085, § 8.)

**§ 20-2-188. Exceptions to requirements for sale or transfer of chemicals, and to licensing requirements.**

transfer of products which include a listed precursor chemical if the product may be sold lawfully with a prescription or over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. section 301 et seq.), or under a rule adopted pursuant to that act.

(b) Notwithstanding any other provision of this article, no person shall be required to obtain a listed precursor license or permit for the sale, receipt, transfer, manufacture, or possession of a listed precursor chemical when:

(1) Such person is a duly licensed physician, dentist, veterinarian, podiatrist, or pharmacist, when the sale, receipt, transfer, manufacture, or possession of such listed precursor chemical is a transaction otherwise lawfully authorized;

(2) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(3) A delivery of a listed precursor chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman.

(Acts 1991, No. 91-589, p. 1085, § 9.)

**§ 20-2-189. Property rights in chemicals forfeited upon violation.**

chemicals as defined in Section 20-2-181, which have been, or which are intended to be sold, transferred, manufactured, purchased for resale, possessed or otherwise transferred in violation of a provision of this article shall be subject to forfeiture to the state and no property right shall exist in them.

(Acts 1991, No. 91-589, p. 1085, § 10.)

**§ 20-2-190. Penalties.**

possesses a listed precursor chemical violates this article if the person:

- (1) Knowingly fails to comply with the reporting requirements of this article;
- (2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;
- (3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

(b) A person who possesses, sells, transfers, or otherwise furnishes a listed precursor chemical commits an offense if the person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance. An offense under this subsection shall constitute a Class B felony.

(Acts 1991, No. 91-589, p. 1085, § 11.)



**Code of AL 1975, Title 34, Chapter 24. Physicians and Other Practitioners of the  
Healing Arts**

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**REFERENCES**

**ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-1-.01 et seq., Board of Medical Examiners; Organization and Administration.

**ARTICLE 1. STATE LICENSING BOARD FOR HEALING ARTS.**

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**HISTORICAL NOTES**

**HISTORY**

**Code Commissioner's Notes**

Acts 1981, No. 81-217, p. 271, § 2, effective April 7, 1981, provides that all functions of the State Licensing Board for the Healing Arts pertaining to chiropractors or the practice of chiropractic shall be transferred to the State Board of Chiropractic Examiners.

**§§ 34-24-1 through 34-24-6. Repealed by Acts 1981, No. 81-217, p. 271, § 1, effective April 7, 1981. §§ 34-24-1 through 34-24-6. Repealed by Acts 1981, No. 81-217, p. 271, § 1, effective April 7, 1981.**

**ARTICLE 2. LICENSES AND REGISTRATION  
GENERALLY.**

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**HISTORICAL NOTES**

**HISTORY**

**Code Commissioner's Notes**

Acts 1981, No. 81-217, p. 271, § 2, effective April 7, 1981, provides that all functions of the State Licensing Board for the Healing Arts pertaining to chiropractors or the practice of chiropractic shall be transferred to the State Board of Chiropractic Examiners.

**§§ 34-24-20 through 34-24-39. Repealed by Acts 1981, No. 81-217, p. 271, § 1,**

effective April 7, 1981. §§ 34-24-20 through 34-24-39. Repealed by Acts 1981, No. 81-217, p. 271, § 1, effective April 7, 1981. **ARTICLE 3. PHYSICIANS AND OSTEOPATHS.**

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## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-3-.01 et seq., Medical Licensure Commission; Hearings in Contested Cases.

### *DIVISION 1. GENERAL PROVISIONS.*

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## REFERENCES

### CROSS REFERENCES

As to exemption from liability for doctors of medicine, interns or residents rendering first aid or emergency care at scenes of accidents, etc., see § 6-5-332.

As to medical liability actions, see §§ 6-5-480 et seq.

As to licenses for persons engaged in practice of medicine, see § 40-12-126.

As to licenses for osteopaths, see § 40-12-136.

### ADMINISTRATIVE CODE

16 Ala. Admin. Code 580-1-4-.01 et seq., Department of Mental Health and Mental Retardation; Administrative Standards for Providers (Non-310).

### **§ 34-24-50. "Practice of medicine or osteopathy" defined.** [References](#) [Annotations](#)

The "practice of medicine or osteopathy" means:

(1) To diagnose, treat, correct, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) To maintain an office or place of business for the purpose of doing acts described in subdivision (1), whether for compensation or not;

(3) To use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions, the designation "doctor," "doctor of medicine," "doctor of osteopathy," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D." or any combination thereof unless such a designation additionally contains the description of another branch of the healing arts for which a person has a license.

(Code 1876, § 4244; Code 1886, § 4078; Code 1896, § 5333; Code 1907, § 7564; Acts 1915, No. 623, p. 661; Code 1923, § 5191; Code 1940, T. 46, § 262; Acts 1959, No.

109, p. 620, § 3; Acts 1973, No. 1120, p. 1882, § 1; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 2.)

## REFERENCES

### ADMINISTRATIVE CODE

9C Ala. Admin. Code 420-5-1-.01, Department of Public Health; Division of Licensure and Certification: Abortion or Reproductive Health Centers.

- RESEARCH REFERENCES

ALR Library

12 ALR 5th 1, Medical Malpractice: Who Are "Health Care Providers," Or The Like, Whose Actions Fall Within Statutes Specifically Governing Actions And Damages For Medical Malpractice.

## ANNOTATIONS

### CASENOTES

**Cited** in Mobile Women's Medical Clinic v. Board of Comm'rs, 426 F.Supp. 331 (S.D.Ala.1977); Williams v. State, 453 So.2d 1051 (Ala.Civ.App.1984); Sellers v. Picou, 474 So.2d 667 (Ala.1985); Wozny v. Godsil, 474 So.2d 1078 (Ala.1985); Bell v. Hart, 516 So.2d 562 (Ala.1987).

### § 34-24-50.1. Definitions. [Historical Notes](#) [References](#)

Unless otherwise indicated from the context, the terms set out below as used in Articles 3, 8, 9, and 10 of this chapter shall have the following meanings:

- (1) Physician. Either a doctor of medicine or a doctor of osteopathy.
  - (2) Licensed to practice medicine. Both the practice of medicine by a doctor of medicine or the practice of osteopathy by a doctor of osteopathy.
  - (3) Doctor. Both doctors of medicine and doctors of osteopathy.
- (Act 2002-140, p. 359, § 2.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section is effective June 1, 2002.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-2-.03, Board of Medical Examiners; Definitions Generally Applicable.

### § 34-24-51. Practicing medicine or osteopathy without license. [References](#)

## Annotations

Any person who practices medicine or osteopathy or offers to do so in this state without a certificate of qualification having been issued in his behalf by the State Board of Medical Examiners and without a license and certificate of registration from the State Licensing Board for the Healing Arts shall be guilty of a misdemeanor and, upon conviction, shall be fined for each offense not less than \$100.00 nor more than \$1,000.00 and may be imprisoned in the county jail for not less than one month nor more than six months. However, nothing in this section or article shall apply to fellows, residents, interns or medical students who are employed by or who are taking courses of instruction at the University of Alabama School of Medicine or such other medical schools or colleges, hospitals or institutions in Alabama as may be approved by the Board of Medical Examiners; and provided, that the work of the fellows, residents, interns or medical students is performed within the facilities of such medical schools or colleges, hospitals or institutions under the supervision of a licensed physician and as an adjunct to his course of study or training, and until said fellows, residents, interns or students meet training requirements for licensure under the laws of the State of Alabama and the regulations of the Board of Medical Examiners of the State of Alabama. Nothing in this section shall be construed as applying to any person practicing chiropractic, dentistry, podiatry, optometry or any other branch of the healing arts, except medicine and osteopathy, pursuant to a license which has been issued, or which may hereafter be issued, by any state licensing board and who are practicing within the scope of such license.

(Code 1876, § 4244; Code 1886, § 4078; Code 1896, § 5333; Code 1907, § 7564; Acts 1915, No. 623, p. 661; Code 1923, § 5191; Code 1940, T. 46, § 262; Acts 1959, No. 109, p. 620, § 3; Acts 1973, No. 1120, p. 1882, § 1; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 2.)

## REFERENCES

### CROSS REFERENCES

As to practicing medicine or osteopathy without complying with licensing and registration provisions, see § 34-24-343.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒6(1, 3).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.


## ANNOTATIONS

### CASENOTES

Athletic trainers 2 ..... enter p

Physician's assistant 1 ..... enter p

#### **1. Physician's assistant**

If a person holds himself out to be physician's assistant and has not been approved by the board to perform as a physician's assistant, then that person has engaged in the unauthorized practice of medicine. *Carmichael v. Riley*, 534 So.2d 280 (Ala.1988). Health  174

## 2. Athletic trainers

Where injured soccer player contended that, according to § 34-24-50 (defining "practice of medicine"), athletic trainer practiced medicine, and because she did not have a license to do so she exceeded her authority, this argument was without merit. This section restricts the application of the licensing procedure. Athletic trainers are part of the "other branches of the healing arts" that now must be licensed, and athletic trainer was practicing within the scope of an athletic trainer's license. *Lennon v. Petersen*, 624 So.2d 171 (Ala.1993).

**Cited** in *Mobile Women's Medical Clinic v. Board of Comm'rs*, 426 F.Supp. 331 (S.D.Ala.1977); *Williams v. State*, 453 So.2d 1051 (Ala.Civ.App.1984).

### § 34-24-52. Proceedings to restrain unlawful practice. [References](#) [Annotations](#)

The State Board of Medical Examiners, in addition to the powers and duties expressed in this article with respect to the denial of the certificate of qualification to practice medicine or suspension or revocation of a certificate of qualification to practice medicine, shall have the power to commence and maintain in any circuit court having jurisdiction of any person within this state who is practicing medicine without a certificate of qualification or to whom a certificate of qualification has been denied, or whose certificate of qualification has been suspended or revoked by the action of the board, an action in the nature of quo warranto as provided for in Section 6-6-590 et seq., as the same is now or may hereafter be amended, to order such person from continuing to practice medicine or osteopathy within the State of Alabama, and jurisdiction is conferred upon the circuit courts of this state to hear and determine all such cases. The board may commence and maintain such action without the filing of a bond or security without the order or direction of a circuit judge. Nothing in this section shall be construed as conferring criminal jurisdiction upon any court not now possessing such criminal jurisdiction, nor shall such court, as an incident to the said action in the nature of quo warranto herein authorized, have the power to assess the criminal penalties heretofore set out. An injunction shall be issued upon proof that the person or persons is now or has in the past engaged in the unlawful practice of medicine or osteopathy without requiring proof of actual damage sustained by any person. If such injunction is issued, the injunction shall not relieve any person, corporation or association, nor the officers or directors thereof, from criminal prosecution for the unlawful practice of medicine. (Code 1876, § 4244; Code 1886, § 4078; Code 1896, § 5333; Code 1907, § 7564; Acts 1915, No. 623, p. 661; Code 1923, § 5191; Code 1940, T. 46, § 262; Acts 1959, No. 109, p. 620, § 3; Acts 1973, No. 1120, p. 1882, § 1; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 2.)

## REFERENCES




## CROSS REFERENCES

As to commission commencing actions where persons practicing without license, see § 34-24-341.

## LIBRARY REFERENCES

### **American Digest System:**

Injunction  89(5).

### **Corpus Juris Secundum:**

C.J.S. Injunctions §§ 133-135.

## ANNOTATIONS

### CASENOTES

Admissibility of evidence 7 ..... enter p

Applicability 2 ..... enter p

Burden of proof 6 ..... enter p

Complaint 5 ..... enter p

Constitutionality 1 ..... enter p

Fee requirement 4 ..... enter p

Relationship with other laws 3 ..... enter p

Sufficiency of evidence 8 ..... enter p

### **1. Constitutionality**

Section is not contrary to federal or state constitutions. *Bragg v. State*, 134 Ala. 165, 32 So. 767 (1901) (superseded by statute on other grounds as stated in *Smith v. State*, 8 Ala.App. 352, 63 So. 28); *McLosky v. State*, 19 Ala.App. 544, 98 So. 706 (1923), rev'd on other grounds, 210 Ala. 458, 98 So. 708; *Jackson v. State*, 19 Ala.App. 633, 99 So. 826 (1924); *Wideman v. State*, 20 Ala.App. 422, 104 So. 438 (1924), cert. denied, 213 Ala. 170, 104 So. 440.

### **2. Applicability**

This section does not prohibit a merely casual and friendly service. *Nelson v. State*, 97 Ala. 79, 12 So. 421 (1893); *Ex parte Wideman*, 213 Ala. 170, 104 So. 440 (1925).

A patent medicine vender who is duly licensed may recommend his remedies and sell them to persons who come to him stating their ailments, and he is not guilty of violating this section though he has no certificate of qualification as required. *Harper v. State*, 20 Ala.App. 324, 102 So. 55 (Ala.App.1924), certiorari denied 212 Ala. 123, 102 So. 58.

Assuming that one brings himself within this section and practices medicine without a certificate of qualification, he is nonetheless guilty because in so doing he also practices his religion. In those cases, however, where no charge is made for the service, and recourse is had merely to prayer, without the employment of material or human agencies, it cannot be said that the person invoking divine interpretation in behalf of another is treating or offering to treat diseases of human beings by any system within the meaning of the statute and cannot be said to be practicing medicine. *Fealy v. City of Birmingham*, 15 Ala.App. 367, 73 So. 296 (Ala.App.1916).

One who, without a certificate of qualification, cures diseases by power of mental


suggestion and the use of harmless appliances and pills is subject to prosecution under this section. *Smith v. State*, 8 Ala.App. 352, 63 So. 28 (Ala.App.1913), affirmed 183 Ala. 116, 63 So. 70.

This action applies to all persons who practice the art of healing, no matter what agency be employed. *Bragg v. State*, 134 Ala. 165, 32 So. 767 (Ala.1902).

### **3. Relationship with other laws**

When there is a city ordinance on the same subject as this section, this section does not render the ordinance void in toto, and if a prosecution is had under the city ordinance, on appeal to the circuit court, the prosecution will be continued under the city ordinance. *City of Birmingham v. Edwards*, 18 Ala.App. 459, 93 So. 233 (Ala.App.1922), certiorari denied 208 Ala. 697, 93 So. 922.

### **4. Fee requirement**

Under this section prosecution cannot be defeated by showing that the fee received in behalf of an incorporated church only came to the alleged practitioner indirectly. *Fealy v. City of Birmingham*, 15 Ala.App. 367, 73 So. 296 (Ala.App.1916). Health  163



### **5. Complaint**

Under this section, complaint alleging person has intruded into profession of treating or offering to treat diseases of human beings without having obtained certificate from state board of medical examiners held to sufficiently charge intruding into profession in violation of § 6-6-591. *Donovan v. State*, 215 Ala. 55, 109 So. 290 (Ala.1926).

### **6. Burden of proof**

When the state shows that a defendant has treated a disease, the burden then shifts to the defendant to show his certificate of qualification. *McLosky v. State*, 19 Ala.App. 544, 98 So. 706, rev'd on other grounds, 210 Ala. 458, 98 So. 708 (1923); *Jackson v. State*, 19 Ala.App. 633, 99 So. 826 (1924); *Robinson v. State*, 212 Ala. 459, 102 So. 693 (1925).

### **7. Admissibility of evidence**


In prosecution for practicing medicine without license, testimony of patient and her husband as to treatment administered, amount paid therefor and statements by defendant that he was a doctor were admissible as relating to a material issue and as being a part of the res gestae. *McAllister v. State*, 28 Ala.App. 213, 181 So. 511 (Ala.App.1938). Criminal Law  363; Criminal Law  364(2)


Although the state may show many acts which are in violation of this section, *Fason v. State*, 19 Ala.App. 533, 98 So. 702 (1924), if it elects to rely on one especial act and the case is reversed on appeal, on the second trial evidence of other acts is not admissible to prove another distinct offense. *Frazier v. State*, 19 Ala.App. 322, 97 So. 251 (Ala.App.1923).

A certificate which does not conform to the statutory requirement as to a certificate of qualification is not admissible in evidence to show that this section has not been violated, when a person is prosecuted under this section. *Gullatt v. State*, 18 Ala.App. 21, 88 So.

371 (Ala.App.1920). See also Brooks v. State, 146 Ala. 153, 41 So. 156 (1906).

## 8. Sufficiency of evidence

In prosecution for practicing medicine without license, testimony of patient that she was sick at time defendant treated her and under treatment by a physician sufficed to show that the patient was suffering from a disease within requirement of statute forbidding treatment of "diseases" without a license. *McAllister v. State*, 28 Ala.App. 213, 181 So. 511 (Ala.App.1938). Health  186(5)

In prosecution for practicing medicine without a license, question of defendant's guilt held for the jury. *McAllister v. State*, 28 Ala.App. 213, 181 So. 511 (Ala.App.1938). Health  187

**Cited** in *Jordan v. Brewin & Boggan*, 19 Ala. 238 (1851); *Holland v. Adams*, 21 Ala. 680 (1852); *Mays v. Williams*, 27 Ala. 267 (1855); *Brooks v. State*, 88 Ala. 122, 6 So. 902 (1889); *Stough v. State*, 88 Ala. 234, 7 So. 150 (1889); *Harrison v. State*, 102 Ala. 170, 15 So. 563 (1893); *McCurry v. Gibson*, 108 Ala. 451, 18 So. 806 (1895); *Carter v. State*, 3 Ala.App. 112, 57 So. 1022 (1912); *Cummings v. State*, 214 Ala.209, 106 So. 852 (1925); *Wenzel v. State*, 241 Ala. 406, 3 So.2d 26 (1941); *Mobile Women's Medical Clinic v. Board of Comm'rs*, 426 F.Supp. 331 (S.D. Ala.1977).

**§ 34-24-53. Board of Medical Examiners -- Powers and duties generally; rules and regulations; quorum; fund to defray litigation costs.** [Historical Notes](#) [References](#)  
[Annotations](#)

(a) The Board of Censors of the Medical Association of the State of Alabama, as constituted under the laws now in force, or which may hereafter be in force, and under the constitution of said association, as said constitution now exists or may hereafter exist, is constituted the State Board of Medical Examiners and is charged with the duties and clothed with the powers hereinafter prescribed; said board is hereby vested with authority to adopt and promulgate rules and regulations and to do such other acts as may be necessary to carry into effect the duties and powers which accrue to it under laws now in force or which may hereafter be in force; and a quorum as provided for by the constitution of the Medical Association of the State of Alabama shall be competent to act.

(b) The board is hereby specifically authorized to set aside from its general revenues and income a special fund designated to defray the fees, costs and expenses of litigation involving the board and its members or staff, and the commission and its members and staff, arising out of the lawful discharge of the duties and obligations of the board or commission. A portion of the special fund so designated may be expended to purchase liability insurance for the members of the board, its officers, executives and attorneys and for members of the commission and its officers, executives and attorneys.

(Code 1876, § 1530; Code 1886, § 1301; Code 1896, § 3260; Code 1907, § 1626; Acts 1911, No. 209, p. 234, § 1; Code 1923, § 2836; Code 1940, T. 46, § 258; Acts 1965, No. 797, p. 1497; Acts 1985, No. 85-338, p. 277, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Code Commissioner's Notes

Section 2 of Acts 1989, No. 89-244 provides: "The existence and functioning of the Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to sections 34-24-53 through 34-24-59 and 34-24-310 through 34-24-337, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1993, No. 93-148, § 2, provides: "The existence and functioning of the State Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-84, and 34-24-310 to 34-24-406, inclusive, is continued, and those code sections are expressly preserved."

Acts 1995, No. 95-263, § 1 provides: "The Legislature of the State of Alabama declares that the recognition and regulation of all areas of advanced practice nursing and the collaborative practices between licensed physicians and certified registered nurse practitioners and certified nurse midwives are essential to protect and maintain the public health and safety." See § 34-21-80.

Acts 1997, No. 97-151, § 2, provides: "The existence and functioning of the State Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-84, inclusive, and 34-24-310 to 34-24-406, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2001-268, § 2 provides: "The existence and functioning of the Board of Medical Examiners and the Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-75, inclusive, and 34-24-310 to 34-24-508, inclusive, respectively, Code of Alabama 1975, are continued, and those code sections are expressly preserved."

## REFERENCES

### CROSS REFERENCES

As to the State Board of Medical Examiners and the Board of Nursing regulating the collaborative practice of physicians and advanced practice nurses, see Article 5 of Chapter 21, Title 34, §§ 34-21-80 et seq.

As to donation by two-year college president of surplus property to local public school system, see § 16-1-34.

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-1-.01 et seq., Board of Medical Examiners; Organization and Administration.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ANNOTATIONS

### CASENOTES

Constitutionality 1 ..... enter p

#### 1. Constitutionality

Ala. Const., Art. IV, § 44 precludes the Legislature from delegating its lawmaking authority to the medical association, however, this does not mean that the Legislature is precluded from delegating any authority to the medical association. The Legislative delegation of appointment power it could have itself exercised does not constitute an unconstitutional delegation of lawmaking power. Because sufficient guidelines are established to serve as benchmarks for the medical association's board appointments, that appointment power is not constitutionally offensive. Additionally, because subsection (a) of this section sets legislative guidelines for the board to follow, it is also nonviolative of Ala. Const., Art. IV, § 44. *Evers v. Board of Medical Examiners*, 516 So.2d 650 (Ala.Civ.App.1987), appeal dismissed 108 S.Ct. 1723, 486 U.S. 1001, 100 L.Ed.2d 188.

#### **§ 34-24-54. Board of Medical Examiners -- Disposition of funds; expenses of board and commission members.** [Historical Notes](#) [References](#) [Annotations](#)

All funds received by the State Board of Medical Examiners shall be deposited to the credit of the board in a federally insured financial institution selected by the board. Such funds may be expended for any lawful purpose authorized by this chapter upon a check or draft bearing the signature of the chairman of the board or his or her designee. Out of the funds of the board the members thereof and the members of the Medical Licensure Commission as established by Section 34-24-310 shall receive per diem at a rate of up to two hundred dollars (\$200) per day or any portion thereof, as established by the board, that such board member or commission member shall be in attendance at an official meeting or function of the board or commission. In addition, each board member and commission member shall receive reimbursement for subsistence and travel in accordance with state law for each day actively engaged in the duties of their office. (Code 1907, § 1643; Code 1923, § 2869; Code 1940, T. 46, § 292; Acts 1985, No. 85-338, p. 277, § 3; Act 2001-366, p. 471, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 2001 amendment**, effective May 2, 2001, inserted "or his or her designee" following "chairman of the board", substituted "up to two hundred dollars (\$200)" for "\$100.00", and inserted ", as established by the board," following "any portion thereof".

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-3-.01 et seq., Board of Medical Examiners; Certificate of

Qualification.

## LIBRARY REFERENCES

### American Digest System:

Physicians and Surgeons ☒5(1).

### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

#### 1. Generally

Financial relationship between board of medical examiners and state medical licensure commission not violative of due process since, first, the members of the board are appointed by the medical association of the state, while members of the commission are appointed by the lieutenant governor, the speaker of the house, and the governor, second, while both organizations are funded by proceeds from the issuance of licenses, these proceeds are deposited into a joint account, and each organization establishes its own budget, keeps its own set of books, and uses the joint account to defray expenses incurred, and finally, the entire amount of compensation received by board members and commission members is only \$100 per day for days in which they attend official meetings. *Evers v. Board of Medical Examiners*, 516 So.2d 650 (Ala.Civ.App.1987), appeal dismissed 108 S.Ct. 1723, 486 U.S. 1001, 100 L.Ed.2d 188.

## § 34-24-55. Domestic remedies and emergency services exempted from chapter.

### References

Nothing in this chapter shall prohibit the administration of domestic remedies in a family by any member thereof, or prohibit any person from rendering service to a sick or injured person in an emergency.

(Code 1907, § 1646; Code 1923, § 2872; Code 1940, T. 46, § 295.)

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## § 34-24-56. Report of malpractice judgments and settlements -- Filing; contents;

(a) Every physician or surgeon who holds a license, certificate or other similar authority issued under the provisions of this article and every professional corporation or professional association of a physician or surgeon shall, during the first 30 days of each calendar year, report to the State Board of Medical Examiners any final judgment rendered against such physician, surgeon, or the professional corporation or professional association of any such physician or surgeon during the preceding year, or any settlement in or out of court during the preceding year, resulting from a claim or action for damages for personal injuries caused by an error, omission or negligence in the performance of medical professional services, or in the performance of medical professional services without consent.

(b) The report rendered under this section shall include the name of the physician or surgeon against whom the claim was made or asserted, the name of the claimant, a summary of the allegations made, the injuries incurred by the claimant, and the terms of the judgment or settlement. In the event that the judgment or settlement is entered against a professional corporation or a professional association, the report shall also include the name of the physician or physicians employed by or rendering medical services on behalf of the corporation against whom the claim was made or asserted.

(c) The failure to make the report required by this section shall constitute grounds for the imposition of disciplinary sanctions by the Medical Licensure Commission against the license of the physician or surgeon responsible for making such report. Those sanctions may include suspension or revocation or such other sanctions as may be authorized under Section 34-24-361(h) and Section 34-24-381. In the case of a judgment or a settlement entered against a professional corporation or a professional association, each physician owning shares of the voting stock of a professional corporation and each physician member of a professional association shall be individually and jointly responsible for insuring that the report is rendered on behalf of the corporation or association.

(Acts 1971, No. 2321, p. 3744, § 1; Acts 1991, No. 91-663, p. 1271, § 2.)

## HISTORICAL NOTES

### HISTORY


#### Amendment notes:

**The 1991 amendment**, effective August 8, 1991, added the subsection designation (a); in subsection (a) inserted "and every professional corporation or professional association of a physician or surgeon," substituted "surgeon, or the professional corporation or professional association of any such physician or surgeon" for "or surgeon," and substituted "medical" for "his" preceding "professional services" in two places; and added subsections (b) and (c).

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons 10.

#### Corpus Juris Secundum:

## ANNOTATIONS

### CASENOTES

**Cited** in *Baxter v. Surgical Clinic of Anniston, P.A.*, 495 So.2d 652 (Ala.1986).

**§ 34-24-57. Report of malpractice judgments and settlements -- Review; ground for suspension or revocation of license, etc.; notification; failure to comply.** [References](#)  
[Annotations](#)

(a) The Board of Medical Examiners shall keep a record of all reports made under the provisions of Section 34-24-56, and each year shall review the record of any licensee, certificate holder or person holding similar authority issued by it, who has either of the following:

(1) During the preceding three-year period has had two or more final judgments or settlements, or both, of the type required to be reported pursuant to this section, which exceed a total of \$100,000.00; or

(2) During the preceding three-year period has had four or more final judgments or settlements of the type required to be reported.

(b) The review required by subsection (a) of this section shall be for the purpose of determining whether the agency should take disciplinary action against the person.

(c) It shall be a ground for the suspension or revocation of a license, certificate or other similar authority for the licensee, certificate holder or person holding similar authority to have the number of final judgments or settlements, or both, referred to in subsection (a) of this section; except, that the Board of Examiners shall examine each settlement to determine if there was error, omission or negligence by the licensee, certificate holder or person holding similar authority. If the board determines there was no error, omission or negligence, the settlement shall not be considered for the purpose of this section.

(d) The Board of Medical Examiners shall notify every person licensed, certified or holding similar authority issued by it of the provisions of this article. The notification shall be by registered or certified mail, return receipt requested.

(e) After receiving the notification required by this section, each person who fails to comply with this section is guilty of a misdemeanor.

(Acts 1971, No. 2321, p. 3744, § 2.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒ 11.2.

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 38-42.



## ANNOTATIONS

### CASENOTES

**Cited** in *Baxter v. Surgical Clinic of Anniston, P.A.*, 495 So.2d 652 (Ala.1986).

**§ 34-24-58. Decisions, opinions, etc., of utilization review committee privileged.**

### References Annotations

(a) The decisions, opinions, actions and proceedings rendered, entered or acted upon in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist of any committee of physicians or surgeons, acting as a committee of the Medical Association of the State of Alabama, or any state, county or municipal medical association or society, or as a committee of any licensed hospital or clinic, or the medical staff thereof, undertaken or performed within the scope and function of such committee as legally defined herein shall be privileged, and no member thereof shall be liable for such decision, opinion, action or proceeding.

(b) Within the words and meaning of this section, a committee shall include one formed or appointed as a utilization review committee, or similar committee, or committee of similar purpose, to evaluate or review the diagnosis or treatment or the performance of medical services which are performed with respect to private patients or under public medical programs of either state or federal design, with respect to any physical or mental disease, injury or ailment or to define, maintain or apply the professional or medical standards of the association, society, hospital, clinic or medical staff from, by or for which it was appointed.

(Acts 1971, No. 2277, p. 3668, §§ 1, 2; Acts 1976, No. 693, p. 960, § 2.)

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

#### Law Review Articles:

Maintaining the balance: Reconciling the social and judicial costs of medical peer review protection. 52 Ala.L.Rev. 723, 2001.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

#### 1. Generally

In medical malpractice action, personal representative was not entitled to discovery of

documents produced by hospitals, their agencies, or bodies, in furtherance of their official duties and activities in regard to peer-review process pertaining to physician's performance and privileges. Ex parte Anderson, 789 So.2d 190 (Ala.2000). Pretrial Procedure ☒ 382

**Cited** in Ex parte St. Vincent's Hosp., 652 So.2d 225 (Ala.1994).

**§ 34-24-59. Reporting of physician disciplinary actions.** [Historical Notes](#) [References](#)  
[Annotations](#)

(a) The chief administrative officer of each hospital shall report to the Alabama State Board of Medical Examiners any disciplinary action taken concerning any physician when the action is related to professional ethics, negligence or incompetence in the practice of medicine, moral turpitude, sexual misconduct, abusive or disruptive behavior, or drug or alcohol abuse. Disciplinary action shall include termination, revocation, probation, restriction, denial, failure to renew, suspension, reduction, or resignation of hospital privileges for any of the above reasons. The report shall be in writing and be made within 30 days of the date of the initial action. Failure on the part of a chief administrative officer of a hospital to file a report required under this section shall be a violation of Section 22-21-25(b)(3), and the State Board of Health may, in its discretion, impose upon the hospital found to be in violation, a civil monetary penalty in an amount not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. All monies collected pursuant to this section shall be retained by the Alabama Department of Public Health and may be expended for any legal purpose including, but not limited to, operational expenses of the department.

(b) Any professional society within this state comprised primarily of physicians, which takes formal disciplinary action against a member shall report the action to the Alabama State Board of Medical Examiners, when the action taken is related to professional ethics, negligence or incompetence in the practice of medicine, moral turpitude, sexual misconduct, abusive or disruptive behavior, or drug or alcohol abuse. This report shall be in writing and made within 30 days of the action.

(c) Any report made pursuant to this section shall be privileged from discovery and the individual making the report shall be immune from liability.

(Acts 1981, No. 81-685, p. 1155, §§ 1-3; Acts 1995, No. 95-199, p. 310, § 1; Act 2002-140, p. 359, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1995 amendment**, effective June 19, 1995, in subsection (a) inserted "initial" in the third sentence, and added the fourth and last sentences; inserted "or" in the first sentence of subsection (b); and made nonsubstantive changes.

**The 2002 amendment**, effective June 1, 2002, in subsection (a) substituted "negligence or" for "medical", inserted "in the practice of medicine", inserted "sexual misconduct, abusive or disruptive behavior,", inserted "revocation, probation, restriction, denial, failure to renew, suspension,", substituted "30" for "60" and deleted "required"

preceding "a hospital"; in subsection (b) substituted "negligence or" for "medical", inserted "in the practice of medicine", inserted "sexual misconduct, abusive or disruptive behavior," and substituted "30" for "60".

#### **Code Commissioner's Notes**

In 1995, the Code Commissioner inserted "Section 22-21-25(b)(3)" for "§ 22-21-25(3)" to correctly cite the apparently intended subsection.

## **REFERENCES**

### **CROSS REFERENCES**

For subsection (c) of this section being commented on by Rule 501, Alabama Rules of Evidence, effective January 1, 1996, see the Advisory Committee's Notes to Rule 501 in Volume 23.

### **LIBRARY REFERENCES**

#### **American Digest System:**

Physicians and Surgeons ☒10.

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

## **ANNOTATIONS**

### **CASENOTES**

Generally 1 ..... enter p

#### **1. Generally**

In medical malpractice action, personal representative was not entitled to discovery of documents produced by hospitals, their agencies, or bodies, in furtherance of their official duties and activities in regard to peer-review process pertaining to physician's performance and privileges. Ex parte Anderson, 789 So.2d 190 (Ala.2000). Pretrial Procedure ☒ 382

**§ 34-24-60. Confidentiality of records, etc.; authorized release; waiver.**

#### [Historical Notes](#)   [References](#)

(a) All reports of investigations; documents subpoenaed by the board; reports of any investigative committee appointed by the board; memoranda of the board's counsel relating to investigations; statements of persons interviewed by the board or any committee of the board; all information, interviews, reports, statements or memoranda of any kind furnished to the board or any committee of the board; and any findings, conclusions, or recommendations resulting from proceedings of the board or any committee of the board, unless presented as evidence at a public hearing, shall be privileged and confidential, shall be used only in the exercise of the proper functions of the board, and shall not be public records nor be available for court subpoena or for

discovery proceedings.

Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Board of Medical Examiners or the Medical Licensure Commission.

(b) The board may authorize the release of investigative records and files to municipal, county, state, and federal law enforcement or regulatory agencies or officials and to state and United States territorial medical licensing agencies or officials.

(c) Use of the materials and records in contested cases before the Medical Licensure Commission or release of records to law enforcement, regulatory, or medical licensing agencies or officials shall not be deemed a waiver of confidentiality or privilege established by this section.

(Act 2002-140, p. 359, § 2.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section is effective June 1, 2002.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-9-.12, Board of Medical Examiners; Confidentiality of Records.

**§ 34-24-61. Controlled substance registration certificate; continuing medical education; dismissal of revocation, etc.** [Historical Notes](#) [References](#)

(a) The State Board of Medical Examiners, when acting in the capacity of a certifying board under the Alabama Uniform Controlled Substances Act, Section 20-2-1, et seq., may, within its discretion and for cause, order, and direct that a physician or osteopath holding a registration certificate successfully complete a course or courses of continuing medical education on subjects related to the prescribing, dispensing, administering, or furnishing of controlled substances. The course or courses of continuing medical education ordered by the board under this section may not exceed 25 credit hours of instruction within the calendar year in which the order is entered. Failure or refusal to comply with an order or directive of the board entered pursuant to this section shall constitute grounds, after notice and hearing, for the suspension of the controlled substance registration certificate of the physician or osteopath in question which shall continue in effect until such time as the physician or osteopath has complied with the order of the board or the board has rescinded or withdrawn the order. The provisions of this section supersede any provisions of Sections 20-2-53 and 20-2-54 that

are in conflict. A physician or osteopath adversely affected by a decision of the board to suspend his or her controlled substance registration certificate may obtain judicial review in accordance with the provisions of Section 20-2-53.

(b) Applications for reinstatement of a controlled substance registration certificate or for removal, termination, or modification of restrictions to a controlled substance registration certificate filed with the board less than 24 months following the effective date of the revocation, suspension, restriction, or surrender of a controlled substance registration certificate may, within the discretion of the board, be dismissed by the board without a hearing as prematurely filed. Applications filed more than 24 months following the effective date of the revocation, suspension, restriction, or surrender shall either be granted by the board or set for a hearing before the board which shall be conducted as a contested case under the Alabama Administrative Procedure Act. (Act 2002-140, p. 359, § 2.)

## **HISTORICAL NOTES**

### **HISTORY**

#### **Effective date:**

The act which added this section is effective June 1, 2002.

## **REFERENCES**

### **ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

## ***DIVISION 2. CERTIFICATES OF QUALIFICATION.***

### ***SUBDIVISION 1. GENERAL PROVISIONS.***

•

## **REFERENCES**

### **ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-3-.01 et seq., Board of Medical Examiners; Certificate of Qualification.

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificates.

## **§ 34-24-70. Qualifications of applicants. [Historical Notes](#) [References](#)**

(a) The following constitute the requirements for the issuance of a certificate of qualification for a license to practice medicine in this state:

(1) Medical education requirement. All applicants for a certificate of qualification shall present a diploma or evidence of graduation from any of the

following institutions:

a. A college of medicine or school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association.

b. A college of osteopathy accredited by the American Osteopathic Association.

c. A college of medicine or school of medicine not accredited by the Liaison Committee on Medical Education which is approved by the Board of Medical Examiners. The board may, within its discretion, withhold approval of any college of medicine not designated in either a., or b., above which:

1. Has had its accreditation withdrawn by a national or regional accreditation organization; or

2. Has had its authorization, certification, or licensure revoked or withdrawn by a national or regional governmental supervisory agency; or

3. Has been denied approval or has had its approval withdrawn by any national, state, or territorial licensing jurisdiction based upon an evaluation of the college of medicine or upon a finding of misconduct by the college; or

4. The board has determined, has engaged in fraudulent, criminal, or other practices which are inconsistent with quality medical education.

(2) Post-graduate education requirement.

1. Applicants for a certificate of qualification who graduated from a college of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association or a college of osteopathy accredited by the American Osteopathic Association shall present evidence satisfactory to the board that the applicant has completed one year of post-graduate or residency training in any of the following programs:

a. A program listed in the directory of approved residency training programs published by the American Medical Association.

b. A program accredited by the American Osteopathic Association.

c. A program accredited by the Accreditation Committee of Royal College of Physicians and Surgeons of Canada.

d. A program accredited by the College of Family Physicians of Canada.

2. All other applicants for a certificate of qualification who graduated from a college of medicine not accredited by the Liaison Committee on Medical Education of the American Medical Association or a college of osteopathy not accredited by the American Osteopathic Association shall present evidence satisfactory to the board that the applicant has completed three years of postgraduate or residency training in any of the following programs:

a. A program listed in the directory of approved residency training programs published by the American Medical Association.

b. A program accredited by the American Osteopathic Association.

c. A program accredited by the Accreditation Committee of Royal College of Physicians and Surgeons of Canada.

d. A program accredited by the College of Family Physicians of Canada.

(3) Examination requirements. Applicants for a certificate of qualification shall achieve a passing score as determined by the Board of Medical Examiners on any of the examinations listed below:

a. The United States Medical Licensing Examination.

1. Applicants who are not dual degree candidates as specified in subparagraph (3)a.2. below shall have achieved a passing score on Step 3 in not more than three administrations, except that the board may approve one additional attempt to pass Step 3 after demonstration by the applicant of additional educational experience acceptable to the board. Applicants who are not dual degree candidates shall have completed Steps 1, 2, and 3 within a seven-year period. The seven-year period begins when the applicant initially passes his or her first step. The board shall not accept scores from a reexamination of a previously passed step of the USMLE.

2. Applicants who are dual degree candidates, pursuing the M.D. or D.O. degree and the Ph.D degree in a field of biological sciences approved by the board in its rules, shall have achieved a passing score on Step 3 in not more than three administrations, except that the board may approve one additional attempt to pass Step 3 after demonstration by the applicant of additional educational experience acceptable to the board. Applicants who are dual degree candidates shall have completed Steps 1, 2, and 3 within a 10-year period. The 10-year period begins when the applicant initially passes his or her first step. The board shall not accept scores from a reexamination of a previously passed step of the USMLE.

b. The Federation Licensing Examination.

c. The National Board of Medical Examiners Examination.

d. The National Board of Osteopathic Medical Examiners Examination or its successor examination.

e. The Licensing Medical Council of Canada Examination.

f. Any other examination which is currently approved or which may later be approved by the Board of Medical Examiners and which examines in the following branches of medical learning: General medicine, surgery, obstetrics, gynecology, preventive medicine, jurisprudence, and any other branches as the board may require.

g. Beginning January 1, 2000, the following requirements shall apply:

1. All applicants for initial licensure by examination shall achieve a passing score, as determined by the Board of Medical Examiners, on the United States Medical Licensing Examination or the National Board of Osteopathic Medical Examiners Examination or its successor examination.

2. Applicants by endorsement licensed in another state, the District of Columbia, a territory of the United States, or a province of Canada who completed any one of the licensing examinations listed above prior to January 1, 2000, are eligible for licensure upon proof of a passing score of such examination.

3. Applicants by endorsement licensed in another state or the District of Columbia, or a territory of the United States, or a province of Canada whose licensing examination was completed after January 1, 2000, shall achieve a passing score, as determined by the Board of Medical Examiners, on the United States Medical Licensing Examination or the National Board of Osteopathic Medical Examiners Examination or its successor examination.

4. The board may establish by regulation acceptable combinations of the Federation Licensing Examination, National Board of Medical Examiners Examination, and/or United States Medical Licensing Examination through January 1, 2000, in satisfaction of the examination requirement for a certificate of qualification.

(4) Application and examination fee requirement. Payment in advance to the board of the required application fee or examination fee, or both, in amounts as established in the regulations of the board.

(5) Additional requirements for examination for certain applicants.

a. All applicants who have not passed a written state licensing examination, the examination given by the National Board of Medical Examiners, the United States Medical Licensing Examination, the National Board of Osteopathic Medical Examiners Examination, the examination given by the Licensing Medical Council of Canada, the Special Purpose Examination, or the Federation Licensing Examination within 10 years immediately preceding the date of the application shall either:

1. Achieve a passing score on the Special Purpose Examination.

2. Be certified by or achieve a passing score on a recertification examination given by one of the specialty boards approved by the American Board of Medical Specialties or one of the specialty boards approved by the American Osteopathic Association within 10 years immediately preceding the date of the application.

b. All applicants who graduated from a college of medicine not accredited by the Liaison Committee of Medical Education or the American Osteopathic Association shall achieve a certification given by the Education Council for Foreign Medical Graduates.

(b) *Administration of examinations by the board.*

(1) Applicants for a certificate of qualification who are applying for initial licensure in the State of Alabama, and who meet all qualifications for administration of Step 3 of the United States Medical Licensing Examination are eligible to take the United States Medical Licensing Examination in Alabama.

(2) The following individuals are eligible to take the Special Purpose Examination in Alabama:

a. Applicants who are applying for licensure in Alabama who are required to take the examination under another provision of this section.

b. Individuals required to take the examination pursuant to an order or directive of the State Board of Medical Examiners or the Medical Licensure Commission.

c. Any physician licensed in Alabama who is required to take the examination in connection with an application for licensure in another state.

(c) *Administrative requirements for examination by the board.*

(1) Each applicant shall pay an examination fee as established by the board for each administration of the required examination. The examination fee is not returnable to an unsuccessful applicant.

(2) Examinations administered by the board may be given in Montgomery or at any other location determined by the board.



(3) Applicants who are required to take the Special Purpose Examination or the United States Medical Licensing Examination administered by the board shall, in addition to the other requirements of this section, be eligible to sit for and take the examination under the rules established by the organization which created the examination.

(4) The board may enter into personal service contracts with individuals, firms, or corporations for the administration of any examination required by this section.

(5) The board shall keep complete records of all examinations conducted, giving the name, age, residence, college, date of graduation of the applicant examined, and the results of the examination. These records shall be open to public inspection.

(6) The board shall establish by rule or regulation the passing score for all examinations administered by it under this section.

(d) *Grounds for denial of a certificate of qualification.* The board may deny an application for a certificate of qualification on any of the following grounds:

(1) Failure of the applicant to achieve a passing score on any examination required under this section.

(2) Failure of the applicant to complete the application form as specified by the board or to provide additional information requested by the board in connection with the application.

(3) A finding that the applicant has submitted or caused to be submitted false, misleading, or untruthful information to the board in connection with an application for a certificate of qualification.

(4) Failure to appear before the board or a committee of the board if formally requested to appear in connection with an application for a certificate of qualification.

(5) A finding by the board that the applicant has committed any of the acts or offenses constituting grounds to discipline the licensee to practice medicine in this state pursuant to, but not limited to, Sections 16-47-128, 34-24-360, and 34-24-57.

(e) *Withdrawal of application for certificate of qualification and certificate of qualification.*

(1) An applicant for a certificate of qualification shall have six months from the date the initial signed application form is received by the board to complete the application, except that an applicant for a certificate of qualification who is required to pass an examination as part of the application process shall have 12 months from the date the initial signed application form is received to complete the application. After the expiration of the deadline for completing an application established in the preceding sentence, an incomplete application shall be withdrawn by the board.

(2) A certificate of qualification issued by the board shall be withdrawn by the board after a period of six months from the date of issuance unless the applicant has filed an application for a license to practice medicine with the Medical Licensure Commission of Alabama and paid the required fee.

(3) If either an application for a certificate of qualification or a certificate of qualification is withdrawn by the board, the applicant, to reapply, shall submit a new application form including a new application fee.

(Code 1907, § 1627; Code 1923, § 2837; Acts 1939, No. 448, p. 600, § 1; Code 1940, T. 46, § 259; Acts 1959, No. 109, p. 620, § 1; Acts 1969, No. 617, p. 1124, § 1; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 1; Acts 1975, 4th Ex. Sess., No. 93, p. 2771, § 1;

Acts 1976, No. 747, p. 1027, § 1; Acts 1981, 3rd Ex. Sess., No. 81-1139, p. 415, §§ 2, 3; Acts 1983, 3rd Ex. Sess., No. 83-812, p. 24, § 1; Acts 1983, 3rd Ex. Sess., No. 83-827, p. 47, § 1; Acts 1987, No. 87-775, p. 1514, § 2; Acts 1993, No. 93-148, p. 202, § 3; Act 99-103, p. 123, § 1; Act 2002-140, p. 359, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1993 amendment**, effective March 25, 1993, rewrote this section.

**The 1999 amendment**, effective April 27, 1999, in subsection (a), in subdivision (1) deleted paragraph d and in paragraph c substituted "Examiners. The board may, within its discretion, withhold approval of any college of medicine not designated in either a., or b., above which:" for "under Sections 34-24-79 to 34-24-84, inclusive, if the applicant received the diploma after February 9, 1988." and added subparagraphs 1 through 4, in subdivision (2) inserted the paragraph 1 designation and redesignated paragraphs a through c as subparagraphs a through c thereunder, substituted "Applicants" for "All applicants", inserted "who graduated from a college of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association or a college of osteopathy accredited by the American Osteopathic Association", deleted "(PGY-1)" preceding "in any of the following" and added paragraph 2 with subparagraphs a through c thereunder, in subdivision (3), in paragraph d substituted "Medical Examiners Examination or its successor examination" for "Physicians and Surgeons Examination" and in subparagraphs h1 and h3 inserted "or the National Board of Osteopathic Medical Examiners Examination or its successor examination", and in subdivision (5), in paragraph a substituted "Medical Examiners" for "Physicians and Surgeons"; in subsection (c) deleted subdivision (1) and redesignated subdivisions (2) through (7) as present subdivisions (1) through (6), respectively; added subsection (e); and made nonsubstantive changes.

**The 2002 amendment**, effective March 12, 2002, in subsection (a), in subdivision (2) in paragraph 1. added subparagraph d., in paragraph 2. added paragraph d., in subdivision (3) in paragraph a. deleted the matter following "Examination.", added subparagraphs 1., rewrote subparagraph 2., deleted paragraph g., redesignated paragraph h. as paragraph g.; in subsection (b) deleted subdivision (3); and in subsection (c), in subdivision (2) deleted "in the state" following "location", deleted "on those dates and at those times as set by the board" following "determined by the board" and in subdivision (3) deleted "the Federal Licensing Examination," preceding "the Special".

#### **Code Commissioner's Notes**

Section 5 of Act 2002-140, which amends this section provides in part: "The amendments to Section 34-24-70(a) (2), relating to post-graduate education requirements...shall become effective immediately upon the passage of this amendatory act and its approval by the Governor, or its otherwise becoming law." The act was approved by the Governor on March 12, 2002. Section 5 further provides: "The amendments to Section 34-24-70(a)(3), relating to examination requirements shall become effective on the first day of the sixth month following passage of this amendatory act and its approval by the Governor, or its otherwise becoming law." The first day of the sixth month following approval by the Governor is September 1, 2002. Section 5

provides that the remaining parts of Section 34-24-70 as amended would be effective June 1, 2002.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-3-.03, Board of Medical Examiners; Certificate of Qualification: Post-Graduate Education Requirement.

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒4.

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

**§ 34-24-70.1. Legislative intent that foreign medical school graduates be examined orally. Repealed by Acts 1993, No. 93-148, p. 202, § 6, effective March 25, 1993. § 34-24-71. Application for examination. [References](#) [Annotations](#)**

An applicant shall, before being permitted to enter upon an examination, fill out an application blank giving his name, age, residence, college and date of graduation, references and such other data as the State Board of Medical Examiners may require. The applicant shall make affidavit that he is the person he represents himself to be and that he will faithfully observe all rules governing the examination. Any member of the State Board of Medical Examiners or the supervisors of examinations appointed by said board may administer the oath prescribed. The board shall have the right to refuse to examine a person whose reputation is such as to render him unworthy of membership in the medical profession.

(Code 1907, § 1628; Code 1923, § 2838; Code 1940, T. 46, § 260; Acts 1959, No. 109, p. 620, § 1.)

## REFERENCES

### CROSS REFERENCES

As to the crime of submitting a false or fraudulent application for a certificate of qualification or license to practice medicine, see § 13A-9-21.

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒4.

**Corpus Juris Secundum:**


C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

## ANNOTATIONS

## CASENOTES

Generally 1 ..... enter p

### 1. Generally

The express grant by this section of power to pass on moral qualification of applicant for certificate of qualification to practice medicine is not an implied denial of right to prescribe by rule other reasonable qualifications. *State v. State Board of Medical Examiners*, 209 Ala. 9, 95 So. 295 (Ala.1923). Health  133

**§ 34-24-72. Additional examinations allowed on failure. Repealed by Acts 1993, No. 93-148, p. 202, § 6, effective March 25, 1993. § 34-24-73. Reciprocity generally.**

[Historical Notes](#)   [References](#)   [Annotations](#)

(a) The State Board of Medical Examiners may establish reciprocal agreements for licensure by endorsement with similar boards of other states, the District of Columbia, the territories of the United States, and the provinces of Canada in reference to the issuance of certificates of qualifications. Reciprocal agreements shall not be established with a board of examiners that does not require examination upon substantially the same branches of medical learning as those examinations required for licensure in this state, and that does not maintain a standard of proficiency at least equal to that maintained by the Board of Medical Examiners of this state. When reciprocal agreements have been established, subject to the requirements of Section 34-24-70, a certificate of qualification may be issued by endorsement in behalf of a person who presents evidence of compliance with the requirements of a reciprocating board.

(b) The State Board of Medical Examiners may issue a certificate of qualification by endorsement in behalf of a person who presents evidence of compliance with the requirements of the appropriate board of examiners of another state, the District of Columbia, a territory of the United States, or a province of Canada, if that board requires examination upon substantially the same branches of medical learning as those examinations required for licensure in this state and maintains a standard of proficiency at least equal to that maintained by the State Board of Medical Examiners of this state, whether or not it has established reciprocal agreements with the appropriate board of examiners. Subject to the requirements of Section 34-24-70, the State Board of Medical Examiners may also issue a certificate of qualification by endorsement in behalf of a person who presents evidence satisfactory to the board of successful completion of the Federation Licensing Examination or the examination given by the National Board of Medical Examiners, or the United States Medical Licensing Examination or the National Board of Osteopathic Medical Examiners Examination or the Licensing Medical Council of Canada Examination with a passing score acceptable to the State Board of Medical Examiners.

(c) Any certificate of qualification issued in accordance with this section shall include

on its face a statement that the certificate was issued pro forma and by endorsement.

(d) Any certificate of qualification previously issued by the State Board of Medical Examiners under this section is validated, ratified, and confirmed if that certificate could have been legally issued as the section now reads.

(e) No person in whose behalf a reciprocal or pro forma certificate of qualification has been issued shall practice in this state unless the person obtains a license and certificate of registration from the State Medical Licensure Commission.

(Code 1907, § 1634; Code 1923, § 2844; Code 1940, T. 46, § 267; Acts 1951, No. 185, p. 436, § 1; Acts 1959, No. 109, p. 620, § 5; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 3; Acts 1993, No. 93-148, p. 202, § 3; Act 99-103, p. 123, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1993 amendment**, effective March 25, 1993, rewrote this section.

**The 1999 amendment**, effective April 27, 1999, in subsection (b) inserted "or the National Board of Osteopathic Medical Examiners Examination or the Licensing Medical Council of Canada Examination".

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒ 4.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

## ANNOTATIONS

### CASENOTES

Board's discretion 1 ..... enter p

Burden of proof 2 ..... enter p

#### 1. Board's discretion

The board has the discretionary power to grant or refuse a reciprocity license to practice the healing arts. *Barnes v. State ex rel. Ferguson*, 274 Ala. 705, 151 So.2d 619 (Ala.1963).

#### 2. Burden of proof

Burden is upon applicant to satisfy the board as to the requisite qualifications to practice medicine in Alabama. *Barnes v. State ex rel. Ferguson*, 274 Ala. 705, 151 So.2d 619 (Ala.1963). *Health* ☒ 157

**Cited** in *Katz v. Alabama State Bd. of Medical Examiners*, 351 So.2d 890 (Ala.1977).

**§ 34-24-74. Nonresident consultants; physician accompanying patient being transported into Alabama for treatment.** [References](#)

A doctor of medicine or doctor of osteopathy licensed to practice medicine in any state of the United States or the District of Columbia who may be called into this state in order to treat a patient in consultation with a physician licensed to practice medicine in this state shall be allowed the temporary privilege of practicing medicine in this state. This privilege shall be limited to 10 calendar days in a calendar year.

A doctor of medicine or doctor of osteopathy licensed to practice medicine in any state in the United States or the District of Columbia who accompanies a patient being transported to the State of Alabama by air or ground transportation for the purpose of receiving medical treatment at any hospital, clinic or medical facility in the State of Alabama shall be permitted to render necessary medical care to the patient while the patient is being transported in this state and upon arrival at the destination shall immediately refer the care of the patient to a physician licensed to practice medicine in this state.

(Code 1907, § 1635; Code 1923, § 2845; Code 1940, T. 46, § 268; Acts 1988, No. 88-223, p. 347, § 1.)

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-9-.01, Board of Medical Examiners; Professional Corporations Formed by Physicians or Osteopaths.

15 Ala. Admin. Code 540-X-9-.09, Board of Medical Examiners; Professional Registered Limited Liability Partnerships Formed by Physicians or Osteopaths.

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-75. Certain certificates issued without examination.** [Historical Notes](#)  
[References](#)

(a) The State Board of Medical Examiners may, in its discretion and subject to rules and regulations promulgated by the board, issue a certificate of qualification without examination in behalf of full-time employed physicians teaching in any medical college in Alabama, approved by the Association of American Medical Colleges or the board. The dean of the medical college located in this state shall be required to annually certify to the board the names of members of the college's faculty who have not had issued in their behalf a certificate of qualification by the board and who, in the opinion of the dean, possess the qualifications as the board has or may prescribe including qualifications in the basic sciences, medical education, and other qualifications. The dean, in submitting the certificate of qualifications, shall submit, in addition to the certificate and other information required, a dossier on the applicant to include the following: Name, place of

birth, all places of residence, race, religious beliefs, any convictions of any crimes, education showing institution degrees, medical training degrees and experience, internships by years and place, and any other honorary degrees or recognitions. The dean shall include any other remarks appropriate. The statement shall be signed by the applicant under oath. The dean shall verify the records including the last statement upon "information and belief." The record shall be public records and shall be submitted to the board and kept as permanent records for the use of the board and for public inspection for due cause. If the board concurs in the opinion of the dean, the board may waive any requirement of examination or citizenship, but teacher applicants must be at least 21 years of age and of good moral character. Physicians having certificates issued hereunder must limit their practice to the confines of the medical center of which the medical college is a part, and as an adjunct to their teaching functions in that college. Certification will be automatically withdrawn and automatically expires without notice when full-time employment is terminated. The State Board of Medical Examiners shall make rules and regulations it considers necessary to carry out the purpose of this section. Certificates issued hereunder and licenses based thereon shall state on their face that the practice is limited to the confines of a particular medical center of which a certain medical college is a part and are issued pro forma without examination. Teaching physicians in whose behalf a certificate of qualification is issued hereunder shall be subject to having their certificates of qualification suspended or revoked by the board for the same causes or reasons and in the same manner as is provided by law in the case of other physicians. Certificates of qualification issued under this subsection shall expire annually. Teaching physicians may apply to the Board of Medical Examiners to renew their certificates of qualification, but the board shall have full discretion to accept or reject the application for renewal. Teaching physicians to whom a certificate is issued under this subsection shall be required to pay the board for the initial certificate the same amount of fees as are now or as may be required of applicants for a certificate by endorsement. Fees charged by the board for renewal of certificates issued under this subsection shall not exceed \$15. Nothing in this subsection shall be construed so as to authorize any physician certified hereunder to practice medicine in any manner outside the confines of the medical center in which he or she is employed and any practice or attempt to practice medicine outside the confines of that medical center shall result in the immediate and automatic revocation without notice of any certificate of qualification issued pursuant to this subsection.

(b) The State Board of Medical Examiners may, in its discretion and subject to rules and regulations promulgated by the board, issue a certificate of qualification without examination in behalf of any physician employed full-time at any state penal institution or any state mental institution or any other state institution approved by the Board of Medical Examiners. Physicians having certificates issued hereunder must limit their practice to the confines of the institution in which they are employed. Certification will be automatically withdrawn and automatically expires without notice when full-time employment is terminated. The State Board of Medical Examiners shall make rules and regulations it considers necessary to carry out the purpose of this section. Certificates issued hereunder and licenses based thereon shall state on their face that the practice is limited to the confines of a state institution and are issued pro forma without examination. Physicians in whose behalf a certificate of qualification is issued hereunder

shall be subject to having their certificates of qualification suspended or revoked by the board for the same causes or reasons and in the same manner as is provided by law in the case of other physicians. Certificates of qualification issued under this subsection shall expire annually. Physicians may apply to the Board of Medical Examiners to renew their certificates of qualification, but the board shall have full discretion to accept or reject the application for renewal. Physicians to whom a certificate is issued under this subsection shall be required to pay the board for the initial certificate the same amount of fees as are now or as may be required of applicants for a certificate by endorsement. Fees charged by the board for renewal of certificates issued under this subsection shall not exceed \$15. Nothing in this subsection shall be construed so as to authorize any physician certified hereunder to practice medicine in any manner outside the confines of the institution in which he or she is employed and any practice or attempt to practice medicine outside the confines of that institution shall result in the immediate and automatic revocation without notice of any certificate of qualification issued pursuant to this subsection.

(c) The State Board of Medical Examiners may, in its discretion and subject to the rules and regulations promulgated by the board, issue a certificate of qualification without examination in behalf of physicians enrolled in a residency training program approved by the board. The board shall also have the authority to require the verification and certification it deems necessary to insure that the applicant is qualified for a certificate of qualification. Physicians having certificates issued hereunder must limit their practice to the confines of the institution in which they are placed pursuant to their training program. Certification will be automatically withdrawn and automatically expires without notice when the physician is no longer enrolled in the training program. The State Board of Medical Examiners shall promulgate rules and regulations it considers necessary to carry out the intent of this subsection. Certificates issued hereunder and licenses based thereon shall state on their faces that the practice is limited to the confines of the institution in which the physician is placed pursuant to his or her training program and shall specifically name that institution. Certificates issued hereunder and licenses based thereon shall also state on their faces that they are issued pro forma without examination. Any physician in whose behalf a certificate of qualification is issued hereunder shall be subject to having his or her certificate of qualification suspended or revoked by the board for the same causes or reasons and in the same manner as is provided by law in the case of other physicians. Certificates of qualification issued under this subsection shall expire annually. Physicians may apply to the Board of Medical Examiners to renew their certificates of qualification, but the board shall have full discretion to accept or reject the application for renewal. Physicians to whom a certificate is issued under this subsection shall be required to pay the board for the initial certificate the same amount of fees as are now or as may be required of applicants for a certificate by endorsement. Fees charged by the board for renewal of certificates issued under this subsection shall not exceed \$15. Nothing in this subsection shall be construed so as to authorize any physician certified hereunder to practice medicine in any manner outside the confines of the institution in which he or she is placed pursuant to this training program and any practice or attempt to practice medicine outside the confines of an institution shall result in the immediate and automatic revocation without notice of any certificate of qualification issued pursuant to this subsection.

(Code 1907, § 1636; Acts 1919, No. 599, p. 851; Code 1923, § 2846; Code 1940, T. 46,



§ 269; Acts 1959, No. 109, p. 620, § 6; Acts 1965, No. 671, p. 1206, § 1; Acts 1975, 3rd Ex. Sess., No. 161, p. 405, § 4; Acts 1978, No. 536, p. 589, § 1; Acts 1987, No. 87-568, p. 890, § 1; Acts 1993, No. 93-148, p. 202, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1993 amendment**, effective March 25, 1993, in subsection (a), substituted "any medical college in Alabama" for "the Medical College of Alabama, or any other medical college in Alabama" in the first sentence, and inserted "or she" following "he" in the last sentence; inserted "or she" following "he" in the last sentence of subsection (b); inserted "or her" following "his" in the sixth sentence of subsection (c); substituted "certificate by endorsement" for "certificate by reciprocity" throughout the section; and substituted "the" and "that" for "said" and "such" throughout the section.

## REFERENCES

### CROSS REFERENCES

As to the crime of submitting a false or fraudulent application for a certificate of qualification or license to practice medicine, see § 13A-9-21.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons 4.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-24-76. Examinations held at Montgomery. Repealed by Acts 1993, No. 93-148, p. 202, § 6, effective March 25, 1993. § 34-24-77. Fee for examination or reciprocity. Repealed by Acts 1993, No. 93-148, p. 202, § 6, effective March 25, 1993. § 34-24-78. Records of examinations; minutes of proceedings. Repealed by Acts 1993, No. 93-148, p. 202, § 6, effective March 25, 1993. § 34-24-79. Off-shore medical schools--Legislative finding; mechanism for evaluating such medical education. Repealed by Acts 1996, 1st Ex. Sess., No. 96-53, p. 72, § 1, effective February 7, 1996. § 34-24-80. Off-shore medical schools--Burden of demonstrating programs substantially equivalent to accredited schools; denial of certificate of qualification for licensure; reliance upon foreign accrediting organization. Repealed by Acts 1996, 1st Ex. Sess., No. 96-53, p. 72, § 1, effective February 7, 1996. § 34-24-81. Off-shore medical schools--Rules and regulations; fees. Repealed by Acts 1996, 1st Ex. Sess., No. 96-

53, p. 72, § 1, effective February 7, 1996. § 34-24-82. Off-shore medical schools--Reviewing court bound by determination of board. Repealed by Acts 1996, 1st Ex. Sess., No. 96-53, p. 72, § 1, effective February 7, 1996. § 34-24-83. Off-shore medical schools--Proof required for certificate of qualification; burden; exception for physicians teaching in Alabama medical colleges. Repealed by Acts 1996, 1st Ex. Sess., No. 96-53, p. 72, § 1, effective February 7, 1996. § 34-24-84. Off-shore medical schools--Board and staff immune from liability. Repealed by Acts 1996, 1st Ex. Sess., No. 96-53, p. 72, § 1, effective February 7, 1996. **SUBDIVISION 2.**  
**SUSPENSION OR REVOCATION.**

§§ 34-24-90 through 34-24-105. Repealed by Acts 1981, No. 81-218, p. 273, § 27, effective April 7, 1981. §§ 34-24-90 through 34-24-105. Repealed by Acts 1981, No. 81-218, p. 273, § 27, effective April 7, 1981. **ARTICLE 7. ASSISTANTS TO PHYSICIANS.**

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-7-.01 et seq., Board of Medical Examiners; Assistants to Physicians.

### § 34-24-290. Definitions. [Historical Notes](#) [References](#)

For the purposes of this article, the following words and phrases shall have the following meanings:

- (1) Approved program. A program for the education and training of assistants to physicians which has been formally approved in writing by the board.
- (2) Assistant to physician. A person who is a graduate of an approved program, is licensed by the board, and is registered by the board to perform medical services under the supervision of a physician approved by the board to supervise the assistant.
- (3) Board. The Board of Medical Examiners of the State of Alabama.
- (4) Legend drug. Any drug, medicine, chemical or poison, bearing on the label the words, "Caution, Federal Law prohibits dispensing without prescription" or similar words indicating that the drug, medicine, chemical or poison may be sold or dispensed only upon the prescription of a licensed medical practitioner, except that the term legend drug shall not include any drug, substance or compound which is listed in Schedules I through V of the Alabama Uniform Controlled Substances Act.
- (5) Physician. A person who is licensed to practice medicine in this state and is approved by the board to supervise assistants to physicians.

(6) Physician supervision. A formal relationship between a licensed assistant to a physician and a licensed physician under which the assistant to the physician is authorized to practice as evidenced by a written job description approved in accordance with this article. Physician supervision requires that there shall be at all times a direct continuing and close supervisory relationship between the assistant to the physician and the physician to whom that assistant is registered. The term supervision does not require direct on-site supervision of the assistant to the physician; however, it does require the professional oversight and direction as may be required by the regulations and guidelines of the Board of Medical Examiners.

(7) Prescribe or prescribing. The act of issuing a written prescription for a legend drug.

(8) Prescription. An order for a legend drug which is written and signed by an assistant to a physician authorized to prescribe and administer the drugs and which is intended to be filled, compounded, or dispensed by a pharmacist.

(9) Trainee. A person who is currently enrolled in an approved program in this state.

(Acts 1971, No. 1948, p. 3146, § 2; Acts 1994, No. 94-261, p. 490, § 1; Act 98-604, p. 1324, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1994 amendment**, effective March 24, 1994, added the paragraphs defining "legend drug," "physician supervision," "prescribe or prescribing," and "prescription"; and made nonsubstantive changes.

**The 1998 amendment**, effective May 6, 1998, in the introductory matter substituted "following meanings:" for "respective meanings ascribed by this section:", in subdivision (1) substituted "program, is licensed by the board, as is registered" for "program and is certified" and deleted "or physician" following "physician", in subdivision (6) substituted "a licensed assistant" for "an assistant", deleted "licensed" preceding "physician" and substituted "registered" for "certified", and made nonsubstantive changes.

#### Code Commissioner's Notes

In 1994, the Code Commissioner substituted "assistant to a physician" for "physicians assistant" in subdivision (8) to indicate the apparent intended term.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-7-.01, Board of Medical Examiners; Assistants to Physicians: Definitions.

#### **§ 34-24-291. Purpose of article.**

physicians and others, new scientific and technological developments and new methods of organizing health services have made the question of new uses for allied health personnel the critical issue to be resolved if our supply of health manpower is to be used

effectively and productively. In its concern with the growing shortage and geographic maldistribution of health care services in Alabama, the Legislature intends to establish in this article a framework for legal recognition and development of new categories of health manpower -- assistants to physicians.

(b) It is also the intent of this article to encourage the more effective utilization of the skills of physicians by enabling them to delegate certain health care tasks to qualified assistants to physicians where such delegation is consistent with the patient's health and welfare.

(c) It is also the intent of this article to encourage and permit the utilization of the assistants to physicians by physicians and to remove existing legal constraints. It is also the purpose of this article to allow for innovative developments of programs for the education of assistants to physicians. And, it is also the purpose of this article to provide for the establishing of a system of approving and regulating physicians and assistants to physicians so that a high quality of service is insured.

(Acts 1971, No. 1948, p. 3146, § 1.)

#### **§ 34-24-292. Services performed by trainees and assistants.** [Historical Notes](#) [References](#)

(a) Notwithstanding any other provision of law, a licensed assistant to a physician may perform medical services when the services are rendered under the supervision of a licensed physician or physicians approved by the board; except, that no medical services may be performed under this article except under the supervision of an ophthalmologist in the office in which the physician normally actually practices his or her profession and nowhere else in any of the following areas:

(1) The measurement of the powers or range of human vision or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of or using any optical device in connection with ocular exercises, visual training or orthoptics.

(3) The prescribing of contact lenses for or the fitting or adaptation of contact lenses to the human eye. Nothing in this section shall preclude the performance of routine visual screening.

(b) In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service.

(c) A licensed assistant to a physician registered to a licensed physician practicing under a job description approved in the manner prescribed by this article may prescribe legend drugs to patients, subject to both of the following conditions:

(1) The drug type, dosage, quantity prescribed, and number of refills shall be authorized in an approved job description signed by the physicians to whom the assistant is registered.

(2) The drug shall be on the formulary approved under the guidelines of the Board

of Medical Examiners.

(d) Assistants to physicians may administer any legend drug which they are authorized to prescribe under this section. An assistant to a physician may not initiate a call-in prescription in the name of his or her physician for any drug, whether legend drug or controlled substance, which the assistant is not authorized to prescribe under the job description signed by his or her physician and approved under this section, unless the drug is specifically ordered for the patient by the physician either in writing or by a verbal order which has been reduced to writing and which has been signed by the physician within a time specified in the guidelines of the Board of Medical Examiners. (Acts 1971, No. 1948, p. 3146, § 3; Acts 1975, No. 1152, p. 2276, § 1; Acts 1994, No. 94-261, p. 490, § 1; Act 98-604, p. 1324, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1994 amendment**, effective March 24, 1994, added subsections (c) and (d), and made nonsubstantive changes.

**The 1998 amendment**, effective May 6, 1998, in subsections (a) and (b) substituted "the" for "such" throughout; in subsection (a) substituted "a licensed assistant" for "an assistant" and inserted "or her"; in subsection (b) inserted "or she"; in subsection (c) substituted "A licensed assistant" for "an assistant"; in subsection (c) and subdivision (1) substituted "registered" for "certified".

## REFERENCES

### ADMINISTRATIVE CODE

- 15 Ala. Admin. Code 540-X-7-.23, 540-X-7-.53, Board of Medical Examiners; Assistants to Physicians: Requirements for Supervised Practice.
- 15 Ala. Admin. Code 540-X-7-.25, 540-X-7-.55, Board of Medical Examiners; Assistants to Physicians: Functions and Activities of a Physician Assistant.
- 15 Ala. Admin. Code 540-X-7-.27, 540-X-7-.57, Board of Medical Examiners; Assistants to Physicians: Prohibited Activities and Functions.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒6(1), 10.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28, 53, 57.

## **§ 34-24-293. Powers and duties of board.** [Historical Notes](#) [References](#) [Annotations](#)

(a) The Board of Medical Examiners shall have and exercise all powers and duties previously granted to it. The board may make specific rules and regulations pertaining to the licensure approval, registration, and regulation of assistants to physicians. The board may also make specific rules and regulations pertaining to approvals, disapprovals, and

withdrawing approvals from physicians to utilize assistants to physicians.

(b) The board may recognize, approve, and disapprove new categories and specialties of assistants to physicians as they develop in the delivery of health care.

(c) The board shall issue certificates of approval for programs for the education and training of assistants to physicians which meet board standards.

(d) In developing criteria for program approval, the board shall give consideration to and encourage the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(e) The board shall adopt and publish standards to insure that the programs operate in a manner which does not endanger the health and welfare of patients who receive services within the scope of the program. The board shall review the quality of the curriculum, faculty, and the facilities of the programs and shall issue certificates of approval, and at the other times as it deems necessary to determine that the purposes of this article are being met.

(f) The board shall formulate guidelines for the consideration of applications by a licensed physician or physicians to supervise assistants to physicians. Each application made by a physician or physicians to the board shall include all of the following:

(1) The qualifications, including related experience, possessed by the proposed assistant to a physician.

(2) The professional background and specialty of the physician or physicians.

(3) A description by the physician of his or her, or physicians of their, practice and the way in which the assistant or assistants are to be utilized.

(g) The board shall approve an application by a licensed physician or physicians to supervise an assistant to a physician where the board finds that the proposed assistant is a graduate of an approved program, is licensed by the board and is fully qualified by reason of experience and education to perform medical services under the supervision of a licensed physician and that the licensed physician or physicians are suitable and competent to exercise such supervision.

(h) The board shall provide for penalties for violation of rules and regulations promulgated by the board, including the revocation or suspension of approval of registration to act as an assistant to a physician and approval of physicians to supervise assistants to physicians.

(i) The board shall prescribe a method by which a candidate for approval, having prior certification, registration, or licensure, may be evaluated and approved. The board shall also prescribe a method by which a candidate for approval may be evaluated and given approval based upon the candidate's past education and work experience.

(j) The board may cooperate and participate in those federal programs affecting or in conjunction with these types of allied health personnel.

(k) For the administration of its duties and power in connection with these new categories of health manpower, the board shall establish a reasonable fee schedule, and receipts from payments of said fees shall be expended by the board in carrying out the purposes of this article.

(l) The board may establish written guidelines which govern the prescription practices of assistants to physicians. The guidelines and any and all additions, deletions, corrections, or changes thereto shall not be considered a rule or regulation requiring

publication under the Alabama Administrative Procedure Act. The guidelines shall establish a formulary of legend drugs that may be prescribed by an assistant to physician and establish minimum requirements for review of the prescribing practice of an assistant to a physician by his or her supervising physician.

(m) The board may adopt such other rules and regulations as are reasonably necessary to carry out the intent, purposes, and provisions of this article.

(Acts 1971, No. 1948, p. 3146, § 4; Acts 1994, No. 94-261, p. 490, § 1; Act 98-604, p. 1324, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1994 amendment**, effective March 24, 1994, added subsections (l) and (m), and made nonsubstantive changes.

**The 1998 amendment**, effective May 6, 1998, in subsection (a) substituted "the licensure approval, registration, and regulation" for "the approval and regulation"; in subsection (g) substituted "licensed" for "certified"; in subsection (h) substituted "registration" for "certification" and deleted the last two sentences which read: "Further, any person other than one who has been approved by the board who holds himself or herself out as an assistant to a physician is guilty of a misdemeanor and shall be punishable as provided by law. Any violation of the provisions duly promulgated by the board shall constitute a misdemeanor and shall be punishable as provided by law."; in subsection (i) inserted ", registration," following "certification"; deleted subsection (m) which read: "Prescribing by an assistant to a physician in violation of this article or the guidelines of the board shall constitute grounds for revocation or suspension of a license to practice as a physician's assistant under the procedures outlined in Section 34-24-293."; and redesignated subsection (n) as (m).

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-7-.17, Board of Medical Examiners; Assistants to Physicians: Qualifications of the Supervising Physician.

15 Ala. Admin. Code 540-X-7-.47, Board of Medical Examiners; Assistants to Physicians: Qualifications of the Supervising Anesthesiologist.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:


C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

## 1. Generally

If a person holds himself out to be a physician's assistant and has not been approved by the board to perform as a physician's assistant, then that person has engaged in the unauthorized practice of medicine. *Carmichael v. Riley*, 534 So.2d 280 (Ala.1988).  
Health  174

### **§ 34-24-294. Injunctive proceedings.** [References](#)

(a) The Board of Medical Examiners may, in the name of the people of the State of Alabama and through the Attorney General of the State of Alabama, or district attorney under the supervision of the Attorney General, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by the board or by the provisions of this article.

(b) If it is established that any person has been or is committing any act prohibited by the board or by any provision of this article, the court or any judge shall enter a judgment perpetually enjoining said person from further committing said act.

(c) In case of violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court.

(d) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this article.

(Acts 1971, No. 1948, p. 3146, § 5.)


## REFERENCES

### CROSS REFERENCES

As to rules of supreme court relative to injunctions, see A.R.C.P., Rule 65.

### LIBRARY REFERENCES

#### **American Digest System:**

Injunction  89(5).

#### **Corpus Juris Secundum:**

C.J.S. Injunctions §§ 133-135.

### **§ 34-24-295. License required.** [Historical Notes](#) [References](#)

(a) Any person practicing or offering to practice as an assistant to physician in this state shall be licensed and registered by the board in accordance with this article and the rules of the board.

(b) There shall be no independent unsupervised practice by an assistant to physician who is granted a license to practice as an assistant to physician.

(Act 98-604, p. 1324, § 2.)

## HISTORICAL NOTES

### HISTORY



**Effective date:**

The act which added this section became effective May 6, 1998.

**REFERENCES****ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-7-.15, 540-X-7-.45, Board of Medical Examiners; Assistants to Physicians: Registration.

**LIBRARY REFERENCES****American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-296. Practice without license; penalty.** [Historical Notes](#) [References](#)

(a) Any person who practices or offers to practice as an assistant to physician in this state without a license and registration issued and approved by the board shall be guilty of a misdemeanor which shall be punishable as provided by law.

(b) Any violation of the regulations duly promulgated by the board shall constitute a misdemeanor and shall be punishable as provided by law.

(Act 98-604, p. 1324, § 3.)

**HISTORICAL NOTES****HISTORY****Effective date:**

The act which added this section became effective May 6, 1998.

**REFERENCES****LIBRARY REFERENCES****American Digest System:**

Physicians and Surgeons ☒6(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.

**§ 34-24-297. Issuance of license -- Requirements.** [Historical Notes](#) [References](#)

The following constitutes the requirements for the issuance of a license to practice as an assistant to physician:

(1) Provide evidence, satisfactory to the board, of successful completion of a training program accredited by the Committee on Allied Health Education and Accreditation (CAHEA) or the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or their successor agencies.

(2) Provide evidence, satisfactory to the board, of successful completion of the

Physician Assistant National Certification Examination (PANCE) as administered by the National Commission on Certification of Physician Assistants (NCCPA) or the National Certifying Examination for Anesthesiologist Assistants (NCEAA) as administered by the National Commission for Certification of Anesthesiologist Assistants (NCCAA).

(3) Submit an application on forms approved by the board in its rules.

(4) Pay in advance to the board the required application fee in an amount established in the rules of the board.

(Act 98-604, p. 1324, § 4.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective May 6, 1998.

## REFERENCES

### ADMINISTRATIVE CODE


15 Ala. Admin. Code 540-X-7-.04, 540-X-7-.35, Board of Medical Examiners; Assistants to Physicians: Requirements for the Issuance of a License.

15 Ala. Admin. Code 540-X-7-.06, 540-X-7-.37, Board of Medical Examiners; Assistants to Physicians: License Fee.

15 Ala. Admin. Code 540-X-7-.34 et seq., Board of Medical Examiners; Assistants to Physicians: Practice as an Anesthesiologist Assistant.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons  4, 5(2).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-24.

**§ 34-24-298. Issuance of license -- Application; approval.** [Historical Notes](#)  
[References](#)

(a) Upon the filing of an application in the proper form, if the board is satisfied that all requirements of the law have been met and that the application should be approved in the interest of public welfare, the board shall issue to the applicant a license to practice as an assistant to physician of a size and design to be determined by the board.

(b) Every license issued by the board shall be dated, shall be numbered in the order of issuance, and shall be signed by the chair of the board or the chair's designee.

(Act 98-604, p. 1324, § 5.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective May 6, 1998.

**Code Commissioner's Notes**

In 1998, the Code Commissioner in subsection (a) deleted "a license" after "physician" for grammatical purposes and to provide additional clarity.

**REFERENCES**

**ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-7-.05, 540-X-7-.36, Board of Medical Examiners; Assistants to Physicians: Issuance of License.

**LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons ☒5(2).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

**§ 34-24-299. Renewal of license.** [Historical Notes](#) [References](#)

A license issued by the board to an assistant to physician must be renewed annually on or before January 1 of each year. Application for annual renewal must be received by the board on or before December 31 and must be accompanied by a fee in an amount established in the regulations of the board.

(Act 98-604, p. 1324, § 6.)

**HISTORICAL NOTES**

**HISTORY**

**Effective date:**

The act which added this section became effective May 6, 1998.

**REFERENCES**

**ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-7-.06, 540-X-7-.37, Board of Medical Examiners; Assistants to Physicians: License Fee.

15 Ala. Admin. Code 540-X-7-.07, 540-X-7-.38, Board of Medical Examiners; Assistants to Physicians: License Renewal.

**LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons ☒5(2).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

**§ 34-24-300. Licensing of certified Physician Assistant or Surgeon Assistant.**

Notwithstanding any other provision of this article to the contrary, any person who was certified by the board as a physician assistant or surgeon assistant to a licensed physician on December 21, 1994, shall be eligible for the issuance of a license to practice as an assistant to physician in this state. To qualify for a license under this section, an applicant must submit an application for license and the required fee no later than one year after May 6, 1998. After one year from May 6, 1998, an applicant for license must meet all the requirements of Section 34-24-297.  
(Act 98-604, p. 1324, § 7.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective May 6, 1998.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-7-.06, 540-X-7-.37, Board of Medical Examiners; Assistants to Physicians: License Fee.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒4.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

## § 34-24-301. Temporary licenses. Historical Notes    References

(a) The board may, in its discretion, grant a temporary license to an applicant who meets the qualifications for licensure as an assistant to physician except that the applicant has not taken the Physician Assistant National Certification Examination (PANCE) or the National Certifying Examination for Anesthesiologist Assistants (NCEAA) for the first time or the applicant has taken the PANCE or the NCEAA for the first time and is awaiting the results. A temporary license is valid:

(1) For one year from the date issued, or

(2) Until the results of an applicant's examination are available, or

(3) Until the board makes a final decision on the applicant's request for licensure as an assistant to physician, whichever comes first.

(b) Assistants to physicians granted a temporary license will not be granted prescriptive privileges, allowed to practice without direct, on-site physician supervision, or allowed to practice in a remote practice site.

(c) The board, in its discretion, may waive the requirements in subsection (b).

(d) An assistant to physician who is granted a temporary license shall not practice or offer to practice in this state unless he or she is registered by the board in accordance with this article and the rules of the board.

(e) There shall be no independent unsupervised practice by an assistant to physician who is granted a temporary license.  
(Act 98-604, p. 1324, § 8.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective May 6, 1998.


## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-7-.09, 540-X-7-.39, Board of Medical Examiners; Assistants to Physicians: Temporary License.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons 5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

### **§ 34-24-302. Denial, suspension, revocation, etc., of license.** [Historical Notes](#) [References](#)

The board may, within its discretion, deny the issuance of a license to any person or, after notice and hearing in accordance with board regulations, shall, within its discretion, suspend, revoke, or otherwise discipline the license of a person who shall be found guilty on the basis of substantial evidence of any of the following acts or offenses:

- (1) Conviction of a felony.
- (2) Conviction of any crime or other offense, felony or misdemeanor, reflecting on the ability of the individual to render patient care in a safe manner.
- (3) Conviction of any violation of state or federal laws relating to controlled substances.
- (4) Termination, restriction, suspension, revocation, or curtailment of licensure, registration, or certification as an assistant to physician by another state or other licensing jurisdiction on grounds similar to those stated herein.
- (5) The denial of a registration, a certification, or a license to practice as an assistant to physician by another state or other licensing jurisdiction.
- (6) Being unable to render patient care with reasonable safety by reason of addiction to alcohol or drugs or by reason of a mental or physical condition or disability.
- (7) Revocation, termination, suspension, or restriction of hospital privileges.

(8) Knowingly submitting or causing to be submitted any false, fraudulent, deceptive, or misleading information to the board in connection with an application for licensure or registration as an assistant to physician.

(9) That the assistant to physician has represented himself or herself or permitted another to represent him or her as a physician.

(10) That the assistant to physician has performed otherwise than at the direction and under the supervision of a physician approved by the board.

(11) That the assistant to physician has been delegated or has performed or attempted to perform tasks and functions beyond his or her competence.

(12) That the assistant to physician has performed or attempted to perform tasks beyond those authorized in the approved job description.

(13) Practicing or permitting another to practice as an assistant to physician without the required license and registration from the board.

(14) Prescribing by an assistant to physician in violation of statutory authority or board rules or guidelines.

(15) Intentional falsification of a certification of compliance with the continuing medical education requirement for assistants to physicians established in the board rules.

(Act 98-604, p. 1324, § 9.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective May 6, 1998.

## REFERENCES

### ADMINISTRATIVE CODE


15 Ala. Admin. Code 540-X-7-.10, 540-X-7-.40, Board of Medical Examiners; Assistants to Physicians: Grounds for Denial of License.

15 Ala. Admin. Code 540-X-7-.13, 540-X-7-.43, Board of Medical Examiners; Assistants to Physicians: Administrative Fines.

15 Ala. Admin. Code 540-X-7-.29, 540-X-7-.59, Board of Medical Examiners; Assistants to Physicians: Continuing Medical Education.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons 5(2), 11.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24, 35.

**§ 34-24-303. Registration with board; application; denial or termination of**

**registration.** [Historical Notes](#) [References](#)

(a) Prior to practicing or offering to practice in this state, a licensed assistant to physician shall be registered by the board to perform medical services under the supervision of a physician approved by the board to supervise the assistant.

(b) Registration shall be accomplished by the submission to the board of an application on forms established in the board rules, payment of the required registration fee in an amount established in the board rules, and the granting of approval pursuant to procedures designated in the board rules.

(c) Registration may be denied or terminated by the board in accordance with grounds and procedures established in the rules of the board.  
(Act 98-604, p. 1324, § 10.)

## **HISTORICAL NOTES**

### **HISTORY**

**Effective date:**

The act which added this section became effective May 6, 1998.

## **REFERENCES**

### **ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-7-.15, 540-X-7-.45, Board of Medical Examiners; Assistants to Physicians: Registration.

15 Ala. Admin. Code 540-X-7-.16, 540-X-7-.46, Board of Medical Examiners; Assistants to Physicians: Qualifications for Registration.

15 Ala. Admin. Code 540-X-7-.18, 540-X-7-.48, Board of Medical Examiners; Assistants to Physicians: Denial of Registration.

15 Ala. Admin. Code 540-X-7-.20, 540-X-7-.32, 540-X-7-.50, 540-X-7-.61, Board of Medical Examiners; Assistants to Physicians: Termination of Registration.

### **LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-304. Administrative fines for violation of Section 34-24-302, rules or regulations.** [Historical Notes](#)

In addition to any other penalty authorized by Section 34-24-302, the State Board of Medical Examiners may in its discretion assess administrative fines not to exceed ten thousand dollars (\$10,000) for each violation of any of the provisions of Section 34-24-302 or any rule or regulation duly promulgated by the board.  
(Act 2002-140, p. 359, § 4.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section is effective March 12, 2002.

**§ 34-24-305. Payment of fines; refund. [Historical Notes](#)**

The board shall not renew the license as set forth in Section 34-24-299 of any assistant to physician against whom an administrative fine has been assessed by the board until such fine is paid in full. In the event that the fine is subsequently reduced or set aside on judicial review as provided in the Alabama Administrative Procedure Act, the assistant to physician shall be entitled to a prompt refund of the amount of the fine but shall not be entitled to interest thereon.

(Act 2002-140, p. 359, § 4.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section is effective March 12, 2002.

## **ARTICLE 8. LICENSING AND REGISTRATION OF PHYSICIANS AND OSTEOPATHS.**

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## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-3-.01 et seq., Medical Licensure Commission; Hearings in Contested Cases.

15 Ala. Admin. Code 545-X-4-.01 et seq., Medical Licensure Commission; Miscellaneous.

## ***DIVISION 1. MEDICAL LICENSURE COMMISSION.***

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## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-1-.01 et seq., Medical Licensure Commission; Organization and Administration.

**§ 34-24-310. Created; composition; appointment of members; terms of office, etc.;**



(a) There is hereby created a commission to be known as the Medical Licensure Commission composed of seven physicians, each of whom shall be either a doctor of medicine or a doctor of osteopathy and be licensed to practice medicine or osteopathy in this state. The members of the commission shall be appointed as follows: two physicians shall be appointed by the Lieutenant Governor; two physicians shall be appointed by the Speaker of the House of Representatives; and the remaining three physicians shall be appointed by the Governor. The members shall serve a five year term with no limit as to the number of terms a member can serve. In order to stagger the terms, the initial appointment shall be as follows: The two members appointed by the Lieutenant Governor shall serve a five year term, the two members appointed by the Speaker shall serve a four year term, one member appointed by the Governor shall serve a three year term, one member appointed by the Governor shall serve a two year term, and one member appointed by the Governor shall serve a one year term.

(b) Within 30 days following October 1, 1995, the Governor shall appoint one public member to the commission for an initial term of five years and thereafter shall appoint successor public members to serve terms of five years. There shall be no limitation upon the number of terms a public member may serve. The public member shall continue to serve beyond the expiration of his or her current term until a successor has been appointed. No public member shall be a licensee of the commission or hold a professional degree in any health care field or practice as a licensed health care professional. The public member shall be entitled to participate and vote in all matters before the commission.

(Acts 1981, No. 81-218, p. 273, § 1; Acts 1995, No. 95-277, p. 499, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1995 amendment**, effective June 29, 1995, added the subsection (a) designation; added subsection (b); and made a nonsubstantive change.

#### Code Commissioner's Notes

Section 2 of Acts 1989, No. 89-244 provides: "The existence and functioning of the Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to sections 34-24-53 through 34-24-59 and 34-24-310 through 34-24-337, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1993, No. 93-148, § 2, provides: "The existence and functioning of the State Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-84, and 34-24-310 to 34-24-406, inclusive, is continued, and those code sections are expressly preserved."

Acts 1997, No. 97-151, § 2, provides: "The existence and functioning of the State Board of Medical Examiners and Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-84, inclusive, and 34-24-310 to 34-24-406, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2001-268, § 2 provides: "The existence and functioning of the Board of Medical

Examiners and the Medical Licensure Commission, created and functioning pursuant to Sections 34-24-50 to 34-24-75, inclusive, and 34-24-310 to 34-24-508, inclusive, respectively, Code of Alabama 1975, are continued, and those code sections are expressly preserved."

## REFERENCES

### LIBRARY REFERENCES

**Corpus Juris Secundum:**

53 C.J.S., Licenses §§ 6, 7.

70 C.J.S., Physicians and Surgeons § 6.

## ANNOTATIONS

### CASENOTES

**Cited** in Williams v. State, 453 So.2d 1051 (Ala.Civ.App.1984).

## § 34-24-311. General authority. [References](#) [Annotations](#)

The above constituted commission shall have the exclusive power and authority to issue, revoke and reinstate all licenses authorizing the licensee to practice medicine or osteopathy in the State of Alabama. The commission shall have the authority to promulgate such reasonable rules and regulations as it deems proper for implementing and carrying out the provisions of this article. However, prior to exercising its power and authority to issue, revoke or reinstate licenses, or to promulgate rules and regulations, the Medical Licensure Commission shall receive and consider but not be bound by the recommendation of the State Board of Medical Examiners.  
(Acts 1981, No. 81-218, p. 273, § 2.)

## REFERENCES

### CROSS REFERENCES

As to procurement of professional services, see § 41-16-72.

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ANNOTATIONS

### CASENOTES

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### 1. Generally

The fact that the state medical licensure commission and the board of medical

examiners are housed in the same facilities, as well as the fact that the board's assistant general counsel serves as the commission's general counsel, does not give rise to a conflict which is violative of due process. *Evers v. Board of Medical Examiners*, 516 So.2d 650 (Ala.Civ.App.1987), appeal dismissed 108 S.Ct. 1723, 486 U.S. 1001, 100 L.Ed.2d 188.

**§ 34-24-311.1. Employment of staff.** [Historical Notes](#)

The State Board of Medical Examiners may employ such professional, managerial, and clerical staff under such terms, conditions, and personnel policies as the board deems necessary to enable the board to carry out its duties and responsibilities. The policies shall include, but not be limited to, insurance, annual and other leave, vacation, and holiday policies.  
(Act 2003-370, § 1.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section is effective June 23, 2003.

**§ 34-24-312. State Board of Medical Examiners to furnish facilities, receive funds, etc.**

furnished by the State Board of Medical Examiners. All money, funds, fees, charges, and other receipts provided for in this article shall be paid to the State Board of Medical Examiners and used by said board to carry out the provisions of this article.

(Acts 1981, No. 81-218, p. 273, § 3.)

**§ 34-24-313. Employment of investigators, agents, etc., to assist commission; assistance of prosecuting attorneys; consultants.** [Historical Notes](#) [References](#)

(a) The State Board of Medical Examiners may employ investigators, attorneys, agents, and any other employees and assistants or use any other means necessary to aid the commission in bringing about and maintaining a rigid administration and enforcement of this article, and the board may incur reasonable, necessary, and proper expenses for

assisting the commission and for implementing this article and all laws regulating the practice of medicine or osteopathy within the State of Alabama. The commission and the board may request assistance from the Attorney General, district attorneys, or other prosecuting attorneys of this state in the various circuits and counties. All prosecuting attorneys throughout the state shall assist the commission or the board, upon request of either, in any action for injunction or any prosecution without charge or additional compensation.

(b) The board may employ consultants to render professional services such as, but not limited to, reviewing medical records and providing expert testimony in contested cases, to aid the board in carrying out its lawful responsibilities of regulating the practice of medicine or osteopathy within the State of Alabama. Consultants shall be compensated for professional services at rates established by the board by regulation. In addition, consultants shall be reimbursed for actual reasonable expenses for travel, lodging, meals, long distance telephone expense, and other expenses reasonably incurred in the performance of the consultant's professional services.

(c) Members of the board may render professional services to the board as consultants and shall be reimbursed for those services and for expenses as provided in paragraph (b) above. No board member shall be reimbursed under this section for any day that the board member receives per diem and mileage reimbursement for attendance at board functions and travel pursuant to Section 34-24-54.

(Acts 1981, No. 81-218, p. 273, § 4; Acts 1993, No. 93-148, p. 202, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1993 amendment**, effective March 25, 1993, added the subsection (a) designator to the first paragraph, rewrote subsection (a), and added subsections (b) and (c).

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-1-.12, Board of Medical Examiners; Organization and Administration: Consultants.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ***DIVISION 2. LICENSES AND REGISTRATION GENERALLY.***

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## REFERENCES

## ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-2-.01 et seq., Medical Licensure Commission; Licenses.

**§ 34-24-330. State Board of Medical Examiners to issue certificate of qualification for each applicant; right of appeal when action unfavorable.** [References](#)

It shall be the duty of the State Board of Medical Examiners to issue a certificate of qualification to the Medical Licensure Commission certifying each applicant for a license who has successfully passed the required examination or whose application for a license or certificate of qualification by reciprocity has been acted upon favorably by said board, or whose application for a certificate of qualification without examination or application for reinstatement of a certificate of qualification has been acted upon favorably by said board. Any applicant whose application either for an initial certificate of qualification or for reinstatement of a certificate of qualification is not acted upon favorably by the board shall have the right of appeal to the commission which shall have the authority to either affirm the board's action or order the board to issue a certificate of qualification to the applicant.

(Acts 1981, No. 81-218, p. 273, § 5.)

## REFERENCES

### CROSS REFERENCES

As to the crime of submitting a false or fraudulent application for a certificate of qualification or license to practice medicine, see § 13A-9-21.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒5(1, 3).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18, 25.

**§ 34-24-331. Application for reciprocity to be certified.** [References](#)

A licensee who seeks to be licensed in another state by reciprocity on the basis of his Alabama license shall have his application therefor certified by the State Board of Medical Examiners and approved by the Medical Licensure Commission. The fee for this certification shall be \$10.00 and shall be paid to the board.

(Acts 1981, No. 81-218, p. 273, § 6.)

## REFERENCES

### CROSS REFERENCES

As to the crime of submitting a false or fraudulent application for a certificate of qualification or license to practice medicine, see § 13A-9-21.

## ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-6-.01 et seq., Medical Licensure Commission; Practice of Medicine or Osteopathy Across State Lines.

## LIBRARY REFERENCES

### **American Digest System:**

Physicians and Surgeons ☒5(1).

### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## **§ 34-24-332. New certificate of qualification where license lost or name changed.**

### [References](#)

A licensee whose license has been lost or destroyed may make application to the board for a new certificate of qualification. Such application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the license. Any licensee whose name is changed by marriage or court order may surrender his or her license and apply to the board for a new certificate of qualification. The fee for any new certificate of qualification shall be \$10.00, payable to the board. The commission shall then issue a new license upon such certificate of qualification at no additional charge. (Acts 1981, No. 81-218, p. 273, § 7.)

## REFERENCES

## LIBRARY REFERENCES

### **American Digest System:**

Physicians and Surgeons ☒5(2).

### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

## **§ 34-24-333. Upon certified qualification, commission to issue license; commission to have overall supervision, discretion, etc., in issuance of licenses. [References](#)**

When an applicant for a license to practice medicine or osteopathy has complied fully with all requirements of the law regulating the practice of medicine or osteopathy, the board shall issue a certificate of qualification to the commission certifying the qualification of such person, and thereafter such applicant may apply to the commission for a license to practice medicine or osteopathy for which such certificate indicates his qualification. If the commission finds that the applicant is of good moral character and has been duly certified by the board, the commission shall issue to such applicant a license, unless it appears to the commission that there is other good and reasonable cause for refusing to issue such license, it being the purpose and intent of this section to give

the Medical Licensure Commission overall supervision, discretion and judgment with respect to the issuance of licenses authorizing the licensee to practice medicine or osteopathy within the State of Alabama.  
(Acts 1981, No. 81-218, p. 273, § 8.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

### § 34-24-334. Issuance of license; design, number, fee, etc. [Historical Notes](#) [References](#)

Upon the filing of a certificate of qualification along with an application in proper form, if the commission is satisfied that all requirements of the law have been met, and that such application should be approved in the interest of public welfare, it shall forthwith issue to the applicant a license of a size and artistic design to be determined by the commission.

Every such license issued by the commission shall be dated and be numbered in the order of issuance and shall be signed by the Chairman of the Medical Licensure Commission or his designate and by the Chairman of the State Board of Medical Examiners or his designate. The fee for such license shall be set by the commission but shall not exceed three hundred dollars (\$300).

(Acts 1981, No. 81-218, p. 273, § 9; Act 2002-140, p. 359, § 1.)

## HISTORICAL NOTES

### HISTORY

**Amendment notes:**

**The 2002 amendment**, effective June 1, 2002, substituted "three hundred dollars (\$300)" for "\$150.00".

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

### § 34-24-335. Denial of applications; procedure; no refund of fees. [References](#)

In the event the Medical Licensure Commission determines that the application of

any person for a license should be denied, the commission shall promptly upon reaching its decision notify the applicant of its action, and such notice shall contain the reason for the commission's denial of the application. In all cases where an application is denied, any fee which accompanied the application for the license shall not be refunded, and no applicant shall have the right to recover any part of such fee accompanying his application for license, the board being empowered to retain all of said fee in order to reimburse the state for expenses incident to an investigation of the applicant and the credentials certified to the commission.  
(Acts 1981, No. 81-218, p. 273, § 10.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons 5(2).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

**§ 34-24-336. Continuing medical education.** [Historical Notes](#) [References](#)

(a) It shall be the duty of the State Board of Medical Examiners to promote continuing medical education of all physicians and osteopaths licensed by the commission and is empowered to spend a portion of its funds in any manner it deems desirable for carrying out this purpose. The board is specifically empowered to provide funds to any nonprofit corporation for the purpose of conducting continuing medical education programs without being bound by the provisions of any law requiring competitive bidding. Such programs must be open to all licensed physicians and osteopaths without regard to membership in any professional organization.

(b) The board shall adopt a program of continuing medical education for all licensees living in the State of Alabama not later than October 1, 1991. After said date, successful completion of the requirements of said continuing medical education program shall be a requisite for license renewal. Licensees who reside outside of Alabama are exempt from the provisions of this subsection.

(c) Effective January 1, 2003, the board may require all physicians and osteopaths to successfully complete a prescribed course of continuing medical education on a subject or subjects designated by the board. The board may prescribe by regulation a fixed period of time or deadline for completion of the prescribed continuing medical education course or courses. The board may make provision for a physician or osteopath to be excused from this requirement for reasons satisfactory to the board. The Medical Licensure Commission of Alabama may, subject to notice and hearing, within its discretion, indefinitely suspend the license to practice medicine of a physician or osteopath who fails to successfully complete the course or courses of continuing medical education required by this subsection or impose administrative fines or other penalties as authorized by Section 34-24-381.

(Acts 1981, No. 81-218, p. 273, § 11; Acts 1989, No. 89-244, p. 357, § 3; Act 2002-140, p. 359, § 1.)



## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

The 2002 amendment, effective June 1, 2002, added subsection (c).

## REFERENCES


### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-14-.01 et seq., Board of Medical Examiners; Continuing Medical Education.

15 Ala. Admin. Code 545-X-5-.01 et seq., Medical Licensure Commission; Continuing Medical Education.

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons  4, 5(2).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-24.

### § 34-24-337. Certificate of registration; reinstatement of license. [Historical Notes](#) [References](#)

(a) Every person licensed to practice medicine or osteopathy in the State of Alabama shall, on or before December 31 of each succeeding year, apply to the commission for a certificate of registration which shall be effective during the next calendar year. All new licenses issued by the commission, upon application, shall be registered by the commission at the time of issuance, and a certificate of registration, which shall be effective until and including the following December 31, shall be issued to the licensee. Each application shall be made on a form to be furnished by the commission. The application shall give the name of the applicant in full, his or her address, the date and number of the license issued to the applicant for the practice of medicine or osteopathy, and such other facts as shall tend to identify the applicant for registration as the commission shall deem necessary. Each applicant for registration shall submit with the application a check in an amount to be set by the commission, not to exceed three hundred dollars (\$300), as a registration fee; provided, that the registration fee for a period of less than six months shall not exceed fifty dollars (\$50). When any licensee shall fail to register and pay the annual registration fee within 30 days after registration becomes due, as provided in this section, the license of such person shall automatically be revoked without further notice or hearing; provided, that any person whose license is automatically revoked as provided herein may make application in writing to the commission for the reinstatement of such license, which shall be accompanied by payment of all past due renewal fees and the sum of two hundred fifty dollars (\$250) not to exceed a total of five hundred dollars (\$500) for each reinstatement. Reinstatement of the license shall be accomplished in accordance with subsections (b) to (g), inclusive, of this section.

(b) Within five days after receipt of the written application for reinstatement and the

fees as provided above, the commission shall notify the Board of Medical Examiners that the applicant has applied for reinstatement and shall furnish the board with a copy of the application for reinstatement. Within 60 days from the receipt of the application for reinstatement by the commission, the board may file with the commission a notice which shall be termed a "NOTICE OF INTENT TO CONTEST REINSTATEMENT." The contents of the notice shall be sufficient to inform the commission that the board has probable cause to believe that grounds exist for the denial of the application for reinstatement and informing the commission that a hearing is requested before the commission prior to the reinstatement of the license of the applicant. A copy of the NOTICE OF INTENT TO CONTEST REINSTATEMENT shall be sent by the commission to the applicant by certified mail return receipt.

(c) After 60 days from the date that the commission receives the application for reinstatement if the board has not filed a NOTICE OF INTENT TO CONTEST REINSTATEMENT, or at any time that the board notifies the commission in writing that it has determined not to file a NOTICE OF INTENT TO CONTEST REINSTATEMENT or that it has determined to withdraw a NOTICE OF INTENT TO CONTEST REINSTATEMENT previously filed, then the commission shall reinstate the license of the applicant.

(d) Within 30 days after the filing of a NOTICE OF INTENT TO CONTEST REINSTATEMENT, the board shall file with the commission a written complaint which shall be served upon the applicant and set down for hearing by the commission in the manner prescribed in subsection (e) of Section 34-24-361.

(e) The commission may deny reinstatement of a license upon a finding that the applicant has committed any of the acts or offenses set forth in Sections 34-24-360, 34-24-57, 16-7-148, or any other provision of law establishing grounds for the revocation, suspension, or discipline of a license to practice medicine. In addition, the commission may reinstate the license and impose any penalty, restriction, or condition of probation provided for in subsection (h) of Section 34-24-361 and Section 34-24-381 as the commission deems necessary to protect the public health and the patients of the applicant. If, at the conclusion of the hearing, the commission determines that no violation has occurred, the license of the applicant shall be reinstated.

(f) All hearings and appeals under this section shall be governed by Sections 34-24-310 to 34-24-384, inclusive, and the Alabama Administrative Procedure Act, Section 41-22-1, et seq.

(g) Revocation of a license to practice medicine under subsection (a) of this section for nonpayment of the annual registration fee shall not deprive the commission of jurisdiction to hear and adjudicate written complaints filed by the Board of Medical Examiners under subsection (e) of Section 34-24-361 and subsection (d) of this section. In all cases where an application for reinstatement is denied, the fees which accompany the application for reinstatement shall not be refunded and no applicant shall have the right to recover any part of such fees, the board being empowered to retain all of the fees in order to reimburse the state of expenses incident to the investigation of the applicant and the conduct of hearings as provided in this section.

(Acts 1981, No. 81-218, p. 273, § 12; Acts 1994, No. 94-195, p. 249, § 1; Act 2001-268, p. 325, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1994 amendment**, effective March 10, 1994, added the subsection (a) designation, in the sixth sentence of subsection (a) substituted "which shall be accompanied by" for "and the commission shall reinstate such license upon the," deleted "upon the further payment of" preceding "the sum of" and substituted "\$250 (two hundred fifty dollars) not to exceed a total of \$500 (five hundred dollars) for each reinstatement" for "\$50.00" and added the last sentence; added subsections (b) through (g); and made nonsubstantive changes.

**The 2001 amendment**, effective April 20, 2001, in subsection (a), in the fourth sentence substituted "The" for "such", substituted "of the applicant" for "applicant's", inserted "or her" following "his" and substituted "the" for "such" following "issued to", in the fifth sentence substituted "three hundred dollars (\$300)," for "\$125.00" and substituted "fifty dollars (\$50)" for "\$50.00", in the sixth sentence substituted "two hundred fifty dollars (\$250)" for "\$250 (two hundred fifty dollars)" and substituted "five hundred dollars (\$500)" for "\$500 (five hundred dollars)", and in the seventh sentence substituted "(b) to (g), inclusive," for "(b) through (g)"; in subsection (b) substituted "license of the applicant" for "applicant's license"; in subsection (d) substituted "subsection (e) of Section 34-24-361" for "Section 34-24-361(e)"; in subsection (e) substituted "subsection (h) of Section 34-24-361 and Section 34-24-381 as the commission" for "Sections 34-24-361(h) and 34-24-381 as it"; in subsection (f) substituted "section" for "subsection"; and in subsection (g) substituted "subsection (a)" for "subparagraph (a)", substituted "nonpayment" for "non-payment", and substituted "subsection (e) of Section 34-24-361" for "the provisions of Section 34-24-361(e)".

#### **Code Commissioner's Notes**

Section 16-7-148, which is referred to in the first sentence of subsection (e), is a section which does not exist in the Code of Alabama.

## REFERENCES

### CROSS REFERENCES

As to nonrenewal of annual certificate of registration pending payment of any administrative fines assessed by the Board of Medical Examiners or the Medical Licensure Commission, see § 34-24-383.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒5(2).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

### **§ 34-24-338. Certificate of registration -- Contents; change of address. [References](#)**

Upon due application therefor, by a licensee of the Medical Licensure Commission, and upon the payment of fees required to be paid by this article, the commission shall

issue to such applicant a certificate of registration signed by the executive officer of the commission, which certificate shall recite that such person is duly registered for the year specified.

Such certificate of registration shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license and such other information as the commission shall deem advisable.

If any registrant shall change his address during the year for which any certificate of registration shall have been issued by the commission, such registrant shall, within 15 days thereafter, notify the commission of such change, whereupon the commission shall issue to such registrant without additional fee, a duplicate registration certificate for such new location.

(Acts 1981, No. 81-218, p. 273, § 13.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-339. Certificate of registration -- Not required for retired persons.**

### References

Any person licensed to practice medicine or osteopathy in this state, who is retired or may hereafter retire from such practice, shall not be required to register as required by this article; provided, that such person shall file with the commission an affidavit on a form to be furnished by the commission, and such affidavit shall state the date on which said person retired from such practice and such other facts as shall tend to verify such retirement as the commission shall deem necessary; provided, that if such person thereafter reengages in the practice of medicine or osteopathy such person shall register with the Medical Licensure Commission as provided by this article.

(Acts 1981, No. 81-218, p. 273, § 14.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-340. Fees to be collected by State Board of Medical Examiners.** [References](#)

Fees for the issuance of licenses to practice medicine or osteopathy and registration fees shall be collected and kept by the State Board of Medical Examiners which shall furnish all employees and facilities utilized by the commission. The State Board of Medical Examiners shall continue to collect fees for examination, certificates of qualification, and such other fees as are authorized by law or this article. (Acts 1981, No. 81-218, p. 273, § 15.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-341. Commission to commence actions where persons practicing without license; court jurisdiction; issuance of injunctions.** [References](#)

The Medical Licensure Commission, in addition to the powers and duties expressed in this article with respect to the denial of a license, denial of a certificate of registration and suspension or revocation of a license, is empowered to commence and maintain in its own name in any circuit court having jurisdiction of any person within this state, who is practicing without a license or to whom a license has been denied, or to whom a certificate of registration has been denied or whose license has been suspended or revoked by action of the commission, an action in the nature of quo warranto as provided for in Section 6-6-590 et seq., as the same is now or may hereafter be amended, to order such person to cease and desist from continuing to practice medicine or osteopathy within the State of Alabama, and jurisdiction is conferred upon the circuit courts of this state to hear and determine all such cases. The commission may commence and maintain such action without the filing of a bond or security and without the order or direction of a circuit judge. Nothing in this section shall be construed as conferring criminal jurisdiction upon any court not now possessing such criminal jurisdiction, nor shall such court, as an incident to the said action in the nature of quo warranto herein authorized, have the power to assess the criminal penalties herein set out. An injunction shall be issued upon proof that the person is now or has in the past engaged in the unlawful practice of medicine or osteopathy without requiring proof of actual damage sustained by any person. If such injunction is issued, the injunction shall not relieve any person, corporation, or association, nor the officers or directors thereof, from criminal prosecution for the unlawful practice of medicine or osteopathy. (Acts 1981, No. 81-218, p. 273, § 16.)

## REFERENCES

### CROSS REFERENCES

As to proceedings to restrain unlawful practice, see § 34-24-52.

### **LIBRARY REFERENCES**

**American Digest System:**

Injunction 89(5).

**Corpus Juris Secundum:**

C.J.S. Injunctions §§ 133-135.

**§ 34-24-342. Construction of article; commission to have exclusive power over licenses; licenses to be filed with county probate judge. [References](#)**

No provision of this article shall be construed as repealing any other law with reference to the requirements regulating the practice of medicine or osteopathy except insofar as the same may conflict with the provisions of this article. It is the purpose of this article to vest exclusively in the Medical Licensure Commission the power to issue, revoke and reinstate all licenses to practice medicine or osteopathy.

Any person who receives a license to practice medicine or osteopathy shall, within 10 days after locating in a county, file said license in the office of the judge of probate of such county for records; and, should said practitioner remove his residence to another county, he shall within said time have his license recorded in that county.

(Acts 1981, No. 81-218, p. 273, § 17.)

### **REFERENCES**

### **LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons 5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-343. Penalty for violations of article. [References](#)**

Any person who shall practice medicine or osteopathy without first having complied with all the provisions of this article, and any person who shall violate any of the provisions of this article, shall be fined not less than \$500.00 and not more than \$1,000.00 and, in addition thereto, and at the discretion of the trial judge, may be imprisoned in the county jail for not more than 12 months and each day such person shall practice medicine or osteopathy without meeting all the requirements of all laws now in force and of this article shall constitute a separate offense; and any person filing or attempting to file, as his own, a diploma or license of another or a forged affidavit of identification shall be guilty of a felony and shall be subject to the punishment prescribed for forgery in the second degree.

(Acts 1981, No. 81-218, p. 273, § 18.)

## REFERENCES

### CROSS REFERENCES

As to practicing medicine or osteopathy without license, see § 34-24-51.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons 6(12).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 34.

## ***DIVISION 3. SUSPENSION OR REVOCATION OF LICENSES.***

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## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-3-.01 et seq., Medical Licensure Commission; Hearings in Contested Cases.

**§ 34-24-360. Restrictions, etc., on license; grounds.** [Historical Notes](#) [References](#)  
[Annotations](#)

The Medical Licensure Commission shall have the power and duty to suspend, revoke, or restrict any license to practice medicine or osteopathy in the State of Alabama or place on probation or fine any licensee whenever the licensee shall be found guilty on the basis of substantial evidence of any of the following acts or offenses:

(1) Fraud in applying for or procuring a certificate of qualification to practice medicine or osteopathy or a license to practice medicine or osteopathy in the State of Alabama.

(2) Unprofessional conduct as defined herein or in the rules and regulations promulgated by the commission.

(3) Practicing medicine or osteopathy in such a manner as to endanger the health of the patients of the practitioner.

(4) Conviction of a felony; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(5) Conviction of any crime or offense which reflects the inability of the practitioner to practice medicine or osteopathy with due regard for the health or safety of his patients; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(6) Conviction for any violation of a federal or state law relating to controlled substances; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(7) Use of any untruthful or deceptive or improbable statements concerning the licensee's qualifications or the effects or results of his proposed treatment.

(8) Distribution by prescribing, dispensing, furnishing, or supplying of controlled

substances to any person or patient for any reason other than a legitimate medical purpose.

(9) Gross malpractice or repeated malpractice or gross negligence in the practice of medicine or osteopathy.

(10) Division of fees or agreement to split or divide the fees received for professional services with any person for bringing or referring a patient.

(11) Performance of unnecessary diagnostic tests or medical or surgical services.

(12) Charging fees determined by the commission to be grossly excessive or intentionally filing or causing to be filed false or fraudulent claims, as defined by the commission, for medical or surgical services to any private or government third party payor having a legal or contractual obligation to pay such claims on behalf of a patient.

(13) Aiding or abetting the practice of medicine by any person not licensed by the commission.

(14) Conviction of fraud in filing Medicare or Medicaid claims or conviction of fraud in filing claims to any third party payor; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(15) Any disciplinary action taken by another state against a licensee to practice medicine or osteopathy, based upon acts by the licensee similar to acts described in this section; a certified copy of the record of the disciplinary action of the state making such an action is conclusive evidence thereof.

(16) Refusal to appear before the State Board of Medical Examiners after having been formally requested to do so in writing by the executive director of the board.

(17) Making any fraudulent or untrue statement to the commission or to the State Board of Medical Examiners.

(18) The termination, revocation, probation, restriction, denial, failure to renew, suspension, reduction, or resignation of staff privileges of a licensee by a hospital in this or any other state when such action is related to negligence or incompetence in the practice of medicine, moral turpitude, sexual misconduct, abusive or disruptive behavior, or drug or alcohol abuse.

- (19)a. Being unable to practice medicine or osteopathy with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

- b. When the issue is whether or not a doctor is physically or mentally capable of practicing medicine or osteopathy with reasonable skill and safety to patients, then, upon a showing of probable cause to the board or commission that the doctor is not capable of practicing medicine or osteopathy with reasonable skill and safety to patients, the board or commission may order and direct the doctor in question to submit to either a physical, mental, or laboratory examination or any combination of such examinations to be performed by a physician or osteopath designated by the board. The expense of such examination shall be borne by the physician or osteopath who is so examined.

- c. Every physician licensed to practice medicine or osteopathy in the State of Alabama who accepts the privilege of practicing medicine or osteopathy in the



State of Alabama by actually practicing or by the making and filing of an annual registration to practice medicine shall be deemed to have given his consent to submit to a mental, physical, or laboratory examination or to any combination of such examinations and to waive all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they constitute privileged doctor-patient communications.

d. Upon receipt of credible information that a physician or osteopath in this state has been evaluated or has received inpatient or outpatient treatment for any physical, psychiatric, or psychological illness or for chemical dependency, drug addiction, or alcohol abuse the board may order that the physician execute and deliver to the board an authorization and release form directed to each and every facility or treatment provider authorizing and directing the release to the board of any reports of evaluation, mental or physical, or examination, including psychiatric, psychological, and neuropsychiatric examinations, hospital and treatment provider medical records, reports of laboratory tests for the presence of alcohol or drugs, rehabilitation records or mental competency evaluations. Any and all expenses incurred in the furnishing of the reports, records, or documents which are the subject of an order issued by the board shall be borne by the physician or osteopath who is the subject of the order.

e. Failure or refusal by the physician or osteopath to comply with an order of the board directing the execution and delivery to the board of an authorization and release form as provided in paragraph d. above shall constitute grounds for the summary suspension of the physician's or osteopath's license to practice medicine by the Medical Licensure Commission, which suspension shall continue in effect until such time as the physician or osteopath complies with the order of the board or the order is withdrawn by the board or the order is terminated by the Medical Licensure Commission after a hearing. The provisions of this subsection supersede any provisions of subsection (d) of Section 41-22-19 of the Alabama Administrative Procedure Act that are in conflict.

f. All reports, records, and documents released to the board under the provisions of paragraph d. above are hereby declared to be privileged and confidential and shall not be public records nor available for court subpoena or for discovery proceedings but may be used by the board in the course of its investigations and may be introduced as evidence in administrative hearings conducted by the board or by the Medical Licensure Commission.

Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the State Board of Medical Examiners or the Medical Licensure Commission.

g. A physician or osteopath whose license to practice medicine has been suspended by the Medical Licensure Commission under the authority of paragraph e. above may obtain judicial review in accordance with Sections 41-22-20 and 34-24-367.

- (20)a. Being unable to practice medicine or osteopathy with reasonable skill and

safety to patients by reason of a demonstrated lack of basic medical knowledge or clinical competency.

b. When the issue is whether or not a physician or osteopath has demonstrated a lack of basic medical knowledge or clinical competency then, upon a showing of probable cause to the board that the physician or osteopath is not presently capable of practicing medicine or osteopathy with reasonable skill and safety to patients, the board may order and direct that the physician or osteopath in question submit to a test of medical knowledge as designated by the board or to an evaluation of clinical competency by such means as directed by the board or to any combination of such examinations or evaluations, to be performed by or under the direction of a testing, evaluation, or examination facility or provider approved by the board. The expense of such examinations and evaluations shall be borne by the physician or osteopath who is examined or evaluated.

c. Failure or refusal by a physician or osteopath to comply with an order of the board issued pursuant to paragraph b. above shall constitute grounds for the summary suspension of the physician's or osteopath's license to practice medicine by the Medical Licensure Commission, which suspension shall continue in effect until such time as the physician or osteopath complies with the order of the board or the order is withdrawn by the board or the order is terminated by the Medical Licensure Commission after a hearing. The provisions of this subsection supersede any provisions of subsection (d) of Section 41-22-19 of the Alabama Administrative Procedure Act that are in conflict.

d. A physician or osteopath whose license to practice medicine has been summarily suspended by the Medical Licensure Commission under the authority of paragraph c. above may obtain judicial review in accordance with Sections 41-22-20 and 34-24-367.

e. In the event that an examination or evaluation ordered by the board under the authority of paragraph b. above demonstrates that the physician or osteopath lacks basic medical knowledge or clinical training sufficient to engage in the practice of medicine with reasonable skill and safety to patients, then the board may order that a restriction be placed upon the certificate of qualification and license to practice medicine of the physician or osteopath which restriction may require:

1. The medical practice of the physician or osteopath in question be limited or restricted in a manner consistent with the findings of the examination or evaluation.
2. That the physician or osteopath successfully complete a course or courses of remedial education or clinical training as directed by the board.
3. That the physician or osteopath successfully pass or complete an examination of basic medical knowledge or clinical competency as designated by the board.
4. Any combination of the foregoing.

The expense of any of the examinations, evaluations, and educational or training courses which are the subject of a restriction imposed by the board on the certificate of qualification and license to practice medicine shall be borne by the physician or osteopath in question. A physician or osteopath whose certificate of

qualification and license to practice medicine has been restricted by the board under the authority of this section may request a hearing before the Medical Licensure Commission of Alabama. At such hearing it shall be the burden of the board to demonstrate to the reasonable satisfaction of the commission that the restriction or restrictions are consistent with the findings of the examination or evaluation ordered by the board. All hearings before the Medical Licensure Commission shall be conducted on an expedited basis and any restricting or restrictions shall not be stayed by the commission during the pendency of the hearing. The Medical Licensure Commission may consider, in any hearing resulting from a decision of the board to impose a restriction or restrictions on the certificate of qualification and license to practice medicine of the physician or osteopath in question, the results of all examinations or evaluations of basic medical knowledge or clinical competency upon which the board relied and such other evidence as the commission deems relevant to the issues presented. In rendering a decision, the Medical Licensure Commission is authorized to affirm the restriction or restrictions, modify the restriction or restrictions, or order the removal of the restriction or restrictions imposed by the board.

f. A physician or osteopath adversely affected by a decision of the Medical Licensure Commission resulting from a hearing under the preceding paragraph e. may obtain judicial review in accordance with Sections 41-22-20 and 34-24-367.

g. The Medical Licensure Commission may, within its discretion, revoke or suspend the license to practice medicine of a physician or osteopath who fails to abide by or violates a restriction imposed by the board on the certificate of qualification and license to practice medicine of the physician or osteopath in question, or may impose administrative fines or other penalties as authorized by Section 34-24-361 and Section 34-24-381.

(21) Excessive prescribing, dispensing, furnishing or supplying of a Schedule II controlled substance. A physician or osteopath violates this subdivision if he or she prescribes, orders, dispenses, administers, supplies, or otherwise distributes any Schedule II amphetamine or Schedule II amphetamine like anorectic drug or Schedule II sympathomimetic amine drug or compound thereof, or any salt, compound, isomer, derivative, or preparation of the foregoing which are chemically equivalent thereto, or other nonnarcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

- a. Narcolepsy.
- b. Hyperkinesis.
- c. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
- d. Epilepsy.
- e. Differential psychiatric evaluation of clinically significant depression; provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
- f.1. Clinically significant depression shown to be refractory to other

therapeutic modalities; provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression; or for the clinical investigation of the effects of such drugs or compounds in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun.

2. A physician prescribing, ordering, or otherwise distributing the controlled substances listed above in the manner permitted by this subdivision shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subparagraph shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(22) Failure to maintain for a patient a medical record which meets the minimum standards stated in the rules and regulations promulgated by the commission. (Acts 1981, No. 81-218, p. 273, § 19; Acts 1983, 4th Ex. Sess., No. 83-890, p. 121, § 3; Acts 1987, No. 87-389, p. 555, § 1; Act 2002-140, p. 359, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 2002 amendment**, effective June 1, 2002, substituted ", revoke, or restrict" for "for a specified time, to be determined in the discretion of the commission, or revoke, place on probation or fine", inserted "or place on probation or fine any licensee", in subdivision (2) substituted "Unprofessional" for "Immoral, unprofessional or dishonorable", deleted the undesignated paragraph and paragraphs a. to f. following subdivision (2), in subdivision (12) inserted the matter following "excessive", in subdivision (18) substituted "termination, revocation, probation, restriction, denial, failure to renew, suspension, reduction or resignation" for "removal", substituted "negligence or" for "medical", inserted "in the practice of medicine", inserted "sexual misconduct, abusive or disruptive behavior,", in subdivision (19) designated paragraphs a. through c., added paragraphs d. through g., and added subdivisions (20) through (22).

#### Code Commissioner's Notes

Acts 1983, No. 83-890, § 1, provides: "That it is the intent of the legislature to take cognizance of the fact that significant amounts of amphetamines and amphetamine like stimulant drugs, classified under Schedule II of the Alabama Uniform Controlled Substances Act, are each year being diverted to illegal use and that such diversion contributes substantially to the problems of illegal drug trafficking in the State of Alabama; further that it is the legislative intent that the utilization of amphetamines and amphetamine like drugs and compounds, including sympathomimetic amine drugs or compounds thereof, and other Schedule II nonnarcotic stimulant drugs should be limited to the treatment of those conditions where the safety and effectiveness of the drugs has been clearly demonstrated."

In 2002, the Code Commissioner in the first complete sentence of subdivision (21)

and in subparagraph 2. of paragraph f of subdivision (21) inserted "subdivision" for "section" to reference the apparently intended hierarchy unit. Also, in this subparagraph 2., the Code Commissioner inserted "subparagraph" for "subsection" to reference the apparently intended hierarchy unit.

## REFERENCES

### CROSS REFERENCES

As to assessment of administrative fines, issuance of reprimands and the like, and imposition of restrictions on the practice of medicine for violation of this section, see § 34-24-381.

### ADMINISTRATIVE CODE

- 15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.
- 15 Ala. Admin. Code 540-X-9-.08, Board of Medical Examiners; Sexual Misconduct in the Practice of Medicine.
- 15 Ala. Admin. Code 540-X-13-.05, Board of Medical Examiners, Impaired Physicians Program: Policy Guidelines.
- 15 Ala. Admin. Code 545-X-2-.01 et seq., Medical Licensure Commission; Licenses.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒11.

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 35.

## ANNOTATIONS

### CASENOTES

Aiding and abetting 3 ..... enter p  
Constitutionality 1 ..... enter p  
Construction 2 ..... enter p  
Disciplinary action by other state 4.5 ..... enter p  
Fraud 3.5 ..... enter p  
Miscellaneous 5 ..... enter p  
Sufficiency of evidence 4 ..... enter p

### **1. Constitutionality**

Subdivisions (8) and (19) of this section are in conjunction with medical norms and standards. These subdivisions sufficiently inform physicians of the standards by which they are to conduct themselves and their practices and, that, inasmuch as they proscribe only unacceptable medical practices, they are not overbroad in their reach. These subdivisions are, therefore, not unconstitutionally vague or overbroad. *Waltz v. Herlihy*, 682 F.Supp. 501 (S.D.Ala.1988), affirmed 871 F.2d 123.

Subdivision (3) of this section is constitutional. *Rathle v. Grote*, 584 F.Supp. 1128 (M.D.Ala.1984).

## **2. Construction**

Though this section lists in broad terminology those medical practices which are unacceptable and prohibited by the state, it is supplemented by specific contemporary standards and norms. *Waltz v. Herlihy*, 682 F.Supp. 501 (S.D.Ala.1988), affirmed 871 F.2d 123.

Though this section lists in broad terminology those medical practices which are unacceptable and prohibited by the state, it is supplemented by specific contemporary standards and norms. Therefore, considering subdivision (3) in the context of this section and in conjunction with medical norms and standards, it has been found that subdivision (3) sufficiently informs physicians of the standards and norms by which they are to conduct themselves and their practices. *Rathle v. Grote*, 584 F.Supp. 1128 (M.D.Ala.1984).

## **3. Aiding and abetting**

If physician performs medical services with the aid of a person who holds himself out as a physician's assistant, although he is not licensed as such, the physician is guilty of aiding and abetting the unauthorized practice of medicine. *Carmichael v. Riley*, 534 So.2d 280 (Ala.1988). Health ☒ 164

### **3.5. Fraud**

Substantial evidence supported Medical Licensure Commission's finding that physician had obtained or had procured his Alabama medical license through fraud; the Commission presented evidence that Georgia Medical Board's investigation of physician had not ended by the time physician completed and signed his Alabama license renewal application, and physician answered "no" to question on application which specifically inquired about investigations by any licensing Board/Agency as of the date of the application. *Barngrover v. Medical Licensure Com'n of Alabama*, 2002 WL 1729142 (Ala.Civ.App.2002). Health ☒ 209


## **4. Sufficiency of evidence**

Insufficient evidence supported finding by the Medical Licensure Commission that physician, who was appealing revocation of his license, violated provision of statute prohibiting performance of unnecessary diagnostic tests or medical or surgical services; in the treatment of four of five patients as to which patient had been charged with violating statute, evidence presented involved record-keeping deficiencies, and as to the fifth patient, there was not substantial evidence presented to demonstrate that physician's treatment of patient was not "reasonably required to ensure her well being." *Eley v. Medical Licensure Com'n of Alabama*, 2003 WL 22182394 (Ala.Civ.App.2003). Health ☒ 218

Order of the Alabama State Board of Medical Examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high schedule II drug orders during that same period of time, but where the record was

completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

#### **4.5. Disciplinary action by other state**

Medical Licensure Commission was not required to await outcome of appeal of disciplinary action taken by Georgia against a licensee to practice medicine before initiating its own disciplinary proceedings against physician for obtaining or procuring his Alabama medical license through fraud. *Barngrover v. Medical Licensure Com'n of Alabama*, 2002 WL 1729142 (Ala.Civ.App.2002). Health  215

#### **5. Miscellaneous**

A jury verdict finding a defendant guilty and the judgment of conviction entered thereon constitute a conviction under this section. This policy is plain and consistent with legislative intent. *Evers v. Medical Licensure Com'n of Alabama*, 421 So.2d 89 (Ala.1982).

#### **§ 34-24-360.1. Authority to implement Section 34-24-360.**

the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of Section 34-24-360. (Acts 1983, 4th Ex. Sess., No. 83-890, p. 121, § 4.)

#### **§ 34-24-361. Investigations; reporting offenses; proceedings and actions; privileged information.** [Historical Notes](#) [References](#) [Annotations](#)

(a) The State Board of Medical Examiners on its own motion may investigate any evidence which appears to show that a physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama is or may be guilty of any of the acts, offenses, or conditions set out in Section 34-24-360.

(b) Any physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama shall and is hereby required to, and any other person may, report to the board or the commission any information such physician, osteopath, or other person may have which appears to show that any physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama may be guilty of any of the acts, offenses, or conditions set out in Section 34-24-360, and any physician, osteopath, or other person who in good faith makes such a report to the board or to the commission shall not be liable to any person for any statement or opinion made in such report.

(c) If in the opinion of the board it appears that such information provided to it under the provisions of this section may be true, the board may request a formal interview with the physician or osteopath.

(d) If the physician or osteopath invited to a formal interview before the board refuses to appear for such interview, the commission shall have grounds to suspend or revoke the certificate of qualification of such physician or osteopath.

(e) Any proceeding for suspension or revocation of a license to practice medicine or osteopathy in the State of Alabama shall be conducted in accord with the following procedures:

(1) A written administrative complaint signed by any member of the State Board of Medical Examiners, any duly licensed physician or osteopath, the executive officers of the commission, or any other person shall be filed with the Medical Licensure Commission.

(2) The executive officer of the commission shall set a date for the hearing of said administrative complaint, shall notify the physician or osteopath against whom the administrative complaint was filed of the time and place of said hearing, and shall forward to such physician or osteopath a copy of the administrative complaint filed against him.

(3) Such notice shall be served upon the physician or osteopath against whom the complaint was filed at least 20 days prior to the hearing date.

(4) Said notice may be served by any sheriff of the State of Alabama or by any person designated by the executive officer of the commission, and if served by a person designated by the executive officer, the return of service shall be sworn to by said person before some officer authorized to administer oaths.

(5) If the physician or osteopath against whom a complaint has been filed is out of the state, or evades service, or cannot be served in person, then the service shall be made by mailing a copy of the complaint and of the notice to said person at his last known post office address in this state, and the return shall show that service has been made in this manner.

(6) The investigation shall be held with as little publicity as practicable, consistent with a fair and impartial hearing.

(7) At the hearing the physician or osteopath against whom the complaint has been filed, shall have the right to be represented by counsel and shall have the right to call any witnesses germane to the issues under consideration.

(8) The administrative complaint may be amended without leave of the commission at any time more than 45 days before the first setting of the case for hearing. Thereafter, the commission may permit the administrative complaint to be amended but no amendments shall be permitted that are not germane to the acts, offenses, or conditions originally charged or that materially alters the nature of any act, offense, or condition charged; provided, however, that amendments to conform to the evidence may be allowed in conformance with Rule 15(b), Alabama Rules of Civil Procedure.

(9) The commission shall have the right to determine all questions as to the sufficiency of the complaint, as to procedure, and as to the admissibility and weight of evidence.

(10) If a person whose qualifications are under consideration absents himself, or does not appear after having been given the required notice, the hearing may proceed in his absence.

(f) The commission shall, temporarily, suspend the license of a physician or osteopath



without a hearing simultaneously with the institution of proceedings for a hearing provided under this section on the request of the State Board of Medical Examiners if the board finds that evidence in its possession indicates that the physician's or osteopath's continuation in practice may constitute an immediate danger to his patients or to the public. The commission may meet by telephone conference call to act upon any such request.

(g) A physician or osteopath may surrender his certificate of qualification or request in writing to the State Board of Medical Examiners that a restriction be placed upon his certificate of qualification to practice medicine or osteopathy. The board may accept a surrender or grant such a request for restriction and shall have the authority, if it deems appropriate, to attach such restrictions to the certificate of qualification of the physician or osteopath to practice medicine or osteopathy within the State of Alabama. Removal of a voluntary restriction on a certificate of qualification shall be done only with the approval of the State Board of Medical Examiners. If the board accepts the surrender of a certificate of qualification, it shall notify the commission and the commission shall withdraw the physician's or osteopath's license to practice medicine or osteopathy in the State of Alabama. If the board attaches restrictions to a physician's or osteopath's certificate of qualification, it shall notify the commission of the restrictions and the commission shall also place the restrictions on the physician's or osteopath's license to practice medicine or osteopathy in the State of Alabama. If the board denies a request by an applicant for reinstatement of his certificate of qualification or for removal of a voluntary restriction, the applicant shall have the right of appeal to the commission which has the authority to either affirm the board's action or order the board to modify its action as the commission deems appropriate.

(h) Subsequent to the holding of a hearing and the taking of evidence by the commission as provided for in this section, the commission shall request and consider but not be bound by a recommendation from the State Board of Medical Examiners. After receipt of the board's recommendation, if the commission finds that a physician or osteopath is guilty of any of the acts, offenses, or conditions enumerated in Section 34-24-360, the commission may take any of the following actions or any combinations of the following actions:

- (1) Enter a judgment and impose a penalty.
- (2) Suspend imposition of judgment and penalty.
- (3) Impose judgment and penalty, but suspend enforcement thereof by placing the physician or osteopath on probation, which probation shall be revocable if the commission finds the conditions of the probation order are not followed by the physician or osteopath.
- (4) As a condition of probation the commission may require the physician or osteopath to submit to care, counseling, or treatment by physicians designated by the commission. The expense of such care, counseling, or treatment shall be borne by the physician or osteopath on probation.
- (5) If a license to practice medicine or osteopathy is suspended, revoked, or a licensee placed on probation, the commission may order, as a condition for lifting the suspension or reinstating the license, or as a condition of probation, that the licensee, at his or her own expense, be evaluated or tested for mental or physical impairment, drug or alcohol impairment, medical competence, sexual misconduct or addiction, or

behavioral problems. The results of such evaluation or testing may be considered by the commission in making any further or additional orders or rulings with regard to such physician's or osteopath's license.

(6) The commission may at any time modify the conditions of the probation and may include among them any reasonable condition for the purpose of the protection of the public or for the purpose of the rehabilitation of the probationer or both.

(7) If a license to practice medicine or osteopathy in the State of Alabama is suspended, the holder of said license shall not practice during the term of suspension.

(8) Applications for reinstatement of a license to practice medicine or osteopathy which have been revoked or suspended by the commission and applications for modification or termination of probation or removal or modification of restrictions concerning a license to practice medicine or osteopathy filed with the commission within 24 months from the effective date of the commission's order may, within the discretion of the commission, be dismissed by the commission as prematurely filed, subject to the right of the applicant to refile the application at a later date. An application as described above which is filed with the commission more than 24 months following the effective date of the commission's order may be granted, or may be set for a hearing before the commission, and such hearing shall be conducted as a contested case under the Alabama Administrative Procedure Act. The Medical Licensure Commission shall be without jurisdiction to reinstate the license to practice medicine or osteopathy of a physician or osteopath whose license was revoked by the commission or voluntarily surrendered while under investigation or during the pendency of an administrative hearing if the application for reinstatement is received more than five years after the effective date of the revocation or surrender of the license.

(i) Complaints submitted for hearing before the Medical Licensure Commission under this section or before the State Board of Medical Examiners or testimony with respect thereto shall be absolutely privileged and no law suit predicated thereon may be instituted. Members of the State Board of Medical Examiners, the Medical Licensure Commission, any agent, employee, consultant, or attorney of the board or the commission, the members of any committee of physicians impaneled by the board or the commission, any person making any report or rendering any opinion or supplying any evidence or information or offering any testimony to the board or to the commission in connection with an investigation or hearing conducted by the board or the commission as authorized in this article shall be immune from suit for any conduct in the course of their official duties with respect to such investigations or hearings.

(Acts 1981, No. 81-218, p. 273, § 20; Acts 1986, No. 86-442, p. 807, § 1; Act 2002-140, p. 359, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 2002 amendment**, effective June 1, 2002, in subsection (e), inserted "administrative" in five places, in subdivision (6) deleted ", but the physician or osteopath against whom the complaint has been filed may elect to have the hearing in public" following "hearing", in subdivision (8) inserted "administrative complaint may be

amended without leave of the commission at any time more than 45 days before the first setting of the case for hearing. Thereafter, the", inserted "; provided, however, that amendments to conform to the evidence may be allowed in conformance with Rule 15(b), Alabama Rules of Civil Procedure"; and in subsection (f) inserted the last sentence; in subsection (h) added subdivision (5), redesignated subdivisions (5) and (6) as subdivisions (6) and (7) and added subdivision (8).

#### **Code Commissioner's Notes**

In 2002, the Code Commissioner in the first sentence of subdivision (8) of subsection (h), before "24 months", inserted "within" in place of "with" to correct a typographical error.

### **REFERENCES**

#### **ADMINISTRATIVE CODE**

- 15 Ala. Admin. Code 540-X-1-.07, Board of Medical Examiners; Powers and Duties of the Board.
- 15 Ala. Admin. Code 540-X-5-.06, Board of Medical Examiners; Hearings and Appeals: Conduct of Investigations by the Board of Medical Examiners.
- 15 Ala. Admin. Code 540-X-13-.05, Board of Medical Examiners, Impaired Physicians Program: Policy Guidelines.
- 15 Ala. Admin. Code 545-X-2-.01 et seq., Medical Licensure Commission; Licenses.

#### **LIBRARY REFERENCES**

##### **American Digest System:**

Physicians and Surgeons ☒5(1), 10, 11.

##### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18, 35, 53, 57.

### **ANNOTATIONS**

#### **CASENOTES**

Constitutionality 1 ..... enter p  
Hearing 3 ..... enter p  
Miscellaneous 4 ..... enter p  
Notice 2 ..... enter p

#### **1. Constitutionality**

Section's provisions are on their face well within the degree of reasonableness required to constitute due process of law in a field so permeated with public responsibility as that of health. *Waltz v. Herlihy*, 682 F.Supp. 501 (S.D.Ala.1988), affirmed 871 F.2d 123.

#### **2. Notice**


Where doctor appeared before credentials committee because of its investigation into possibility that he might be aiding or abetting the unauthorized practice of medicine, the physician's assistant applicant, whose job had been terminated in the matter, had no due

process right to know of the meeting since there was no evidence in the record to indicate that the meeting was for any other purpose, and the meeting did not in any way purport to be a hearing to suspend or revoke a license to practice medicine; furthermore, since subsection (e) specifically applies to proceedings to suspend or revoke licenses, physician's assistant applicant had no right that came within its protection. *Carmichael v. Riley*, 534 So.2d 280 (Ala.1988).

### 3. Hearing

The state's interest in protecting the public by authorizing the temporary suspension of a license to practice medicine without a hearing while simultaneously instituting measures which insure a proper post-deprivation hearing, subsection (f) clearly overshadows a physician's interest in continuing his practice until such a hearing on alleged transgressions of medical practice can be conducted. *Waltz v. Herlihy*, 682 F.Supp. 501 (S.D.Ala.1988), affirmed 871 F.2d 123.

### 4. Miscellaneous

Board of medical examiners was acting within its statutory authority and duty to investigate and hold hearings concerning unauthorized practice of medicine where board had received reports that physician's assistant applicant had continued working with doctor as physician's assistant though he was not properly licensed. *Carmichael v. Riley*, 534 So.2d 280 (Ala.1988). Health  164

**Cited** in *Rathle v. Grote*, 584 F.Supp. 1128 (M.D. Ala.1984).

#### **§ 34-24-361.1. Hearings closed; confidentiality of certain records.** [Historical Notes](#)

All hearings conducted by the commission shall be closed. The record in such hearings, including witness testimony, exhibits, and pleadings, shall be confidential, shall not be public record, and shall not be available for court subpoena or for discovery proceedings. All administrative complaints, orders to show cause, notices of hearings, and statements of charges, and all amendments thereto, and all orders of the commission which are dispositive of the issues raised thereby, shall be public record.

Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the state Board of Medical Examiners or the Medical Licensure Commission.  
(Act 2002-140, p. 359, § 4.)

### HISTORICAL NOTES

#### HISTORY

#### Effective date:

The act which added this section is effective June 1, 2002.

#### **§ 34-24-362. Unlawful to practice when license suspended or revoked; reissue of**

**license. [References](#)**

Whenever a license to practice medicine or osteopathy in the State of Alabama has been suspended or revoked, it shall be unlawful for the person whose license has been so suspended or revoked to practice his profession in this state, but the commission may issue in behalf of such person, either with or without reexamination, a new license whenever it deems such course safe and just. Prior to such decision to reissue a license, the commission shall request and consider but not be bound by the recommendation of the State Board of Medical Examiners.  
(Acts 1981, No. 81-218, p. 273, § 21.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒6(1, 3).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.

**§ 34-24-363. Witnesses -- How subpoenaed and sworn; failure to comply. [References](#)**

(a) To any such hearing witnesses may be subpoenaed by the commission on its own motion, or on the demand of either side by subpoena signed by the chairman of the commission, or by the executive officer of the commission, and such subpoenas may be served by any sheriff of the State of Alabama, or by the executive officer of the commission or by any person designated by the executive officer; and, if served by anyone other than a sheriff, the return of service shall be sworn to by said person before some officer authorized to administer oaths. Witnesses may be sworn by the chairman or by the person discharging the duties of said chairman. Similar subpoenas may be issued directing the production of books, papers, or documents at said hearing.

(b) In conducting its investigations, the State Board of Medical Examiners shall have the authority to subpoena witnesses and command the production at any of its meetings of such books, documents, records and papers as it deems pertinent to any matter under investigation. The board, by order of its chairman or executive director, may require any person to produce within this state, at such reasonable time and place as it may designate, any books, documents, records, or papers kept in any office or place without or within this state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the board, in order that an examination thereof may be made by the board, or by any person employed by the board.

(c) In case of failure or refusal on the part of any person to comply with any subpoena, or on the refusal of any witness to testify or answer as to any matter regarding which he may lawfully be interrogated, any circuit court in this state, or any judge thereof, on application of the board or its executive director, may issue an attachment for such person and compel him to comply with such order, or to attend before the board and produce such documents and give his testimony upon such matters as may be lawfully required, and the court or judge shall have the power to punish for contempt as in cases of disobedience of a like order or subpoena issued by or from such court, or a refusal to

testify therein.  
(Acts 1981, No. 81-218, p. 273, § 22.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒11.3(3).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 47-49.

**§ 34-24-364. Witnesses -- Per diem and travel expense.** [References](#)

Any witness attending any such hearing or investigation shall immediately upon his discharge as a witness be paid by the party requesting the subpoena an amount not to exceed the per diem expense allowed to Alabama state employees for in-state travel and the actual cost of his transportation to and from the place of the hearing; not to exceed the mileage rate allowed to Alabama state employees for in-state travel.

(Acts 1981, No. 81-218, p. 273, § 23.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒11.3(3).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 47-49.

**§ 34-24-365. Witnesses -- Depositions.** [References](#)

The commission, board or, with the consent of the commission, any party to any proceeding before the commission, may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in circuit courts, such depositions to be taken on a commission to be issued by the executive officer of the commission or by the executive director of the board and made returnable to either the commission or the board.

(Acts 1981, No. 81-218, p. 273, § 24.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒11.3(3).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 47-49.

**§ 34-24-366. Vote necessary for suspension or revocation; hearing panels.**

[Historical Notes](#)   [References](#)

The commission shall not order the suspension or revocation of a license unless at least five members of the commission are present and a majority of those present vote for such suspension or revocation. However, the commission may appoint hearing panels consisting of no fewer than three commission members. The public member of the commission may be, but shall not be required to be, a member of each such hearing panel. Such hearing panels are authorized to conduct hearings in contested cases in the same manner as the full commission is authorized to conduct hearings. At the conclusion of each hearing conducted by a hearing panel, such hearing panel shall prepare an order which shall be presented to the full commission for ratification and, if ratified by the commission, such order shall be the order of the commission. It shall not be necessary for the members of the commission not on the hearing panel to review the record of the hearing.

(Acts 1981, No. 81-218, p. 273, § 25; Act 2002-140, p. 359, § 3.)

**HISTORICAL NOTES**

**HISTORY**

**Amendment notes:**

**The 2002 amendment**, effective June 1, 2002, added the final five sentences.

**REFERENCES**

**LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons ☒11.3(4).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 50.

**§ 34-24-367. Immediate effect of commission order; judicial review; vacation of order by court; venue.** [References](#)   [Annotations](#)

Judicial review of the orders and decisions of the Medical Licensure Commission shall be governed by the provisions of Section 41-22-20 (the Alabama Administrative Procedure Act); provided however, that the following procedures shall take precedence over the provisions of Section 41-22-20(c) relating to the issuance of a stay of any order of the licensure commission suspending or revoking a license to practice medicine. The suspension or revocation of a license to practice medicine shall be given immediate effect, it being the expressly stated legislative purpose and intent that the imposition of the penalty of suspension or revocation of a license to practice medicine shall create a

presumption that the continuation in practice of the physician constitutes an immediate danger to the public health, safety and welfare. No stay or supersedeas shall be granted pending judicial review of a decision by the licensure commission to suspend or revoke a license to practice medicine unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the licensure commission was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. An order of the licensure commission temporarily suspending a license to practice medicine under the authority of Section 34-24-361(f) shall not be stayed pending judicial review permitted under Section 41-22-20 of any preliminary, procedural or intermediate ruling or decision of the licensure commission unless the reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the licensure commission was taken without statutory authority, was arbitrary or capricious, constituted a gross abuse of discretion or was made in violation of the requirements of Section 41-22-19(d). Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of the commission, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, Chapter 22 of Title 41, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama. (Acts 1981, No. 81-218, p. 273, § 26; Acts 1982, No. 82-493, p. 817, § 1; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-86, p. 110, § 1.)

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.06, Board of Medical Examiners; Hearings and Appeals:  
Conduct of Investigations by the Board of Medical Examiners.

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒11.3(5).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 51-52.

## ANNOTATIONS

### CASENOTES

Applicability 1 ..... enter p

Relationship to other laws 2 ..... enter p

#### 1. Applicability

Where this section as well as the facts in the case revealed that physician's ability to obtain injunctive relief was not yet infringed upon by this section and, furthermore, this section does not apply until the commission has actually issued an order denying or revoking a physician's license, physician's constitutional challenge of the no-stay provision was not ripe for adjudication. *Evers v. Board of Medical Examiners*, 516 So.2d 650 (Ala.Civ.App.1987), appeal dismissed 108 S.Ct. 1723, 486 U.S. 1001, 100 L.Ed.2d 188.



## 2. Relationship to other laws

Exhaustion of state administrative or judicial remedies not prerequisite to action under 42 U.S.C.A. § 1983. *Waltz v. Herlihy*, 682 F.Supp. 501 (S.D.Ala.1988), affirmed 871 F.2d 123.

### ***DIVISION 4. ADMINISTRATIVE FINES, REPRIMANDS AND RESTRICTIONS.***

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## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

**§ 34-24-380. Administrative fines for violation of Section 20-2-54, rules or regulations.** [Historical Notes](#) [References](#)

In addition to any other penalty authorized under Section 20-2-54, the State Board of Medical Examiners, acting in its capacity as a certifying board, may in its discretion assess administrative fines not to exceed ten thousand dollars (\$10,000) for each violation of any of the provisions of Section 20-2-54, or any rule or regulation duly promulgated by the board.

(Acts 1986, No. 86-451, p. 817, § 1; Act 2002-140, p. 359, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 2002 amendment**, effective March 12, 2002, substituted "ten thousand dollars (\$10,000)" for "\$1500.00".


## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

### LIBRARY REFERENCES

#### American Digest System:

Drugs and Narcotics 24.

#### Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 101, 107.

**§ 34-24-381. Administrative fines for violation of Section 34-24-360, rules or regulations; other penalties.** [Historical Notes](#) [References](#)

In addition to any other penalty authorized by Section 34-24-361(h) the Medical Licensure Commission may in its discretion assess administrative fines not to exceed ten thousand dollars (\$10,000) for each violation of any of the provisions of Section 34-24-360 or any rule or regulation duly promulgated by the commission. The Medical Licensure Commission may also in its discretion issue public or private reprimands, public or private censures, and may impose involuntary restrictions upon the certificate of qualification and/or license to practice medicine of any physician or osteopath for each violation of any of the provisions of Section 34-24-360.

(Acts 1986, No. 86-451, p. 817, § 2; Act 2002-140, p. 359, § 3.)

## **HISTORICAL NOTES**

### **HISTORY**

**Amendment notes:**

**The 2002 amendment**, effective March 12, 2002, substituted "ten thousand dollars (\$10,000)" for "\$2500.00" and deleted "letters of admonition, letters of advisement," following "censures,".

**Code Commissioner's Notes**

In 2002, the Code Commissioner in the last sentence deleted "or" preceding "censures" to correct a typographical error.

## **REFERENCES**

### **ADMINISTRATIVE CODE**

15 Ala. Admin. Code 540-X-9-.08, Board of Medical Examiners; Sexual Misconduct in the Practice of Medicine.

### **LIBRARY REFERENCES**

**American Digest System:**

Physicians and Surgeons ☒6(12).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 34.

**§ 34-24-382. Disposition of fines; contracts.** [Historical Notes](#) [References](#)

All administrative fines assessed by the State Board of Medical Examiners and the Medical Licensure Commission shall be paid to the board and may be expended for the general operation of the board and commission. The board is authorized to expend a portion of its funds for the development, administration, and presentation of programs of continuing medical education for physicians licensed to practice medicine in this state. The board is authorized to enter into contracts for the purchase of programs, services, and materials without regard to the competitive bid laws for expenditures made in connection

with the development, administration, and presentation of continuing medical education programs.

(Acts 1986, No. 86-451, p. 817, § 3; Act 2002-140, p. 359, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 2002 amendment**, effective March 12, 2002, substituted "may be expended for the general operation of the board and commission", for one-half of such amounts shall be deposited in a segregated account designated the Alabama Physicians Education Fund", rewrote the second sentence and substituted "in connection with the development, administration, and presentation of continuing medical education programs" for "from the Alabama Physicians Education Fund".

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒5(1).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-383. Payment of administrative fines prerequisite to renewal of annual certificate; refunds.** [References](#)

The Medical Licensure Commission shall not renew the annual certificate of registration as set forth in Section 34-24-337 of any physician against whom an administrative fine has been assessed by the Board of Medical Examiners or the Medical Licensure Commission until such fine is paid in full. In the event that the fine is subsequently reduced or set aside on judicial review as provided in the Alabama Administrative Procedure Act the physician shall be entitled to a prompt refund of the amount of the fine but shall not be entitled to interest thereon.

(Acts 1986, No. 86-451, p. 817, § 4.)

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒5(2).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

**§ 34-24-384. Rules and regulations; reimbursement by physician. [References](#)**

The Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate rules and regulations necessary for the implementation of the provisions of this division. The Board of Medical Examiners is specifically authorized to establish criteria for determining any amounts to be expended on behalf of an impaired physician for education, rehabilitation and treatment and may require that any physician on whose behalf such funds are expended repay or reimburse the Alabama Physicians Education Fund in accordance with rules established by the board. Reimbursement shall be required on any funds expended for the treatment of alcohol and/or drug related problems in accordance with a schedule agreeable to the board or commission.

(Acts 1986, No. 86-451, p. 817, § 5.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## ARTICLE 9. REHABILITATION OF PHYSICIANS AND OSTEOPATHS.

**§ 34-24-400. Duty of Board of Medical Examiners to promote early treatment, etc., of physicians and osteopaths impaired by illness, inebriation, etc.; Alabama Impaired Physicians Committee; expenses; competitive bidding not required.**

### [References](#)

It shall be the duty and obligation of the State Board of Medical Examiners to promote the early identification, intervention, treatment and rehabilitation of physicians and osteopaths licensed to practice medicine in the State of Alabama who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances or as a result of any physical or mental condition. For the purposes of this article the term "impaired" shall mean the inability of a physician or osteopath to practice medicine with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances or as a result of any physical or mental condition. In order to carry out this obligation the State Board of Medical Examiners is hereby empowered to contract with any nonprofit corporation or medical professional association for the purpose of creating,

supporting, and maintaining a committee of physicians to be designated the Alabama Impaired Physicians Committee. The committee shall consist of not less than three nor more than 15 physicians or osteopaths licensed to practice medicine in the State of Alabama and selected in a manner prescribed by the board. The Board of Medical Examiners is authorized to expend such funds as are available to it as the board shall deem necessary to adequately provide for the operational expenses of the Alabama Impaired Physicians Committee, including but not limited to the actual cost of travel, office overhead and personnel expense, and compensation for the members of the committee and its staff. The funds provided by the board under this section for the purposes stated herein shall not be subject to any provision of law requiring competitive bidding.

(Acts 1988, No. 88-536, p. 819, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons 5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-401. Authority of board to contract for Impaired Physicians Committee to undertake certain functions. [References](#)**

The Board of Medical Examiners shall have the authority to enter into an agreement with a nonprofit corporation or medical professional association for the Alabama Impaired Physicians Committee to undertake those functions and responsibilities specified in the agreement. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired physicians to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired physicians;
- (6) Providing post-treatment monitoring and support of rehabilitated impaired physicians; and

(7) Performing such other activities as agreed upon by the Board of Medical Examiners and the Alabama Impaired Physicians Committee.  
(Acts 1988, No. 88-536, p. 819, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-402. Procedures for reporting Impaired Physician Program activity and disclosure and joint review of information. [References](#)**

The Alabama Impaired Physicians Committee shall develop procedures in consultation with the Board of Medical Examiners for:

(1) Periodic reporting of statistical information regarding Impaired Physician Program activity;

(2) Periodic disclosure and joint review of such information as the Board of Medical Examiners may deem appropriate regarding reports received, contracts or investigations made and the disposition of each report, provided however, that the committee shall not disclose any personally identifiable information except as provided in Section 34-24-405.

(Acts 1988, No. 88-536, p. 819, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-403. Nonliability of Impaired Physicians Committee, personnel, etc., for actions within scope of function. [Historical Notes](#) [References](#)**

Any physician or osteopath licensed to practice medicine in the State of Alabama who shall be duly appointed to serve as a member of the Alabama Impaired Physicians Committee and any auxiliary personnel, consultants, attorneys, or other volunteers or employees of the committee taking any action authorized by this chapter, engaging in the performance of any functions or duties on behalf of the committee, or participating in any administrative or judicial proceeding resulting therefrom, shall, in the performance and operation thereof, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any nonprofit corporation or medical professional association or state or county medical association that contracts with or receives funds from the State Board of Medical Examiners for the creation, support and operation of the Alabama Impaired Physicians Committee shall, in so doing, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(Acts 1988, No. 88-536, p. 819, § 1; Act 98-303, p. 497, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1998 amendment**, effective April 15, 1998, inserted "volunteers or", substituted "taking any action authorized by this chapter, engaging in the performance of any functions or duties on behalf of the committee, or participating in any administrative or judicial proceeding resulting therefrom, shall, in the performance and operation thereof" for "shall not be liable to any person for any claim for damages as a result of any decision, opinion, investigation or action taken by the committee or any individual member of the committee made by him within the scope of his function as a member of the committee if such decision, opinion, investigation or action was taken without malice and in a reasonable belief that such action or recommendation is warranted by the facts that were then available", inserted "be immune from any liability, civil or criminal, that might otherwise be incurred or imposed" in two places, substituted "Any" for "No", and substituted "shall, in so doing," for "shall be liable to any person for any claim for damages for any action taken or recommendation made by the Alabama Impaired Physicians Committee, or any member thereof, or any auxiliary personnel, consultant, attorney, or employee of such committee".

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Physicians and Surgeons ☒5(1, 1).

#### **Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

#### **§ 34-24-404. Confidentiality of information, records, and proceedings. [References](#)**

All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the Alabama Impaired Physicians Committee and any findings, conclusions, recommendations or reports resulting from the investigations, interventions, treatment or rehabilitation, or other proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper function of the committee and shall not be public records nor available for court subpoena or for discovery proceedings. Nothing contained herein shall apply to records made in the regular course of business of a physician, osteopath, hospital or other health care provider, and information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Impaired Physicians Committee.  
(Acts 1988, No. 88-536, p. 819, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons 5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-405. Annual report.** [Historical Notes](#) [References](#)

(a) It shall be the duty of the Alabama Impaired Physicians Committee to render an annual report to the State Board of Medical Examiners concerning the operations and proceedings of the committee for the preceding year.

(b) The committee shall report to the State Board of Medical Examiners any physician or osteopath who in the opinion of the committee is unable to practice medicine or osteopathy with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances or as a result of any physical or mental condition when it appears that such physician or osteopath is currently in need of intervention, treatment, or rehabilitation, and such physician or osteopath has failed or refused to participate in programs of treatment or rehabilitation recommended by the committee. In any report to the State Board of Medical Examiners made pursuant to the requirements of this subsection, the committee or its authorized designee may forward to the board any and all reports, evaluations, treatment records, medical records, documents, or information relevant to the physician or osteopath upon whom the report is made, unless specifically prohibited by federal law or regulation, notwithstanding any law or regulation of this state declaring that such evaluations, information, treatment records, medical records, documents, or reports are confidential or privileged. All such information, evaluations, documents, reports, treatment records, or medical records received by the board in a report submitted pursuant to this subsection shall be privileged and confidential and shall not be public records nor available for court subpoena or for discovery proceedings but may be used by the board in the course of its investigations and may be introduced as evidence in administrative hearings conducted by the board or by the Medical Licensure Commission.

(c) A report to the Alabama Impaired Physicians Committee shall be deemed to be a report to the State Board of Medical Examiners for the purposes of any mandated reporting of physician impairment otherwise provided for by the statutes of this state. (Acts 1988, No. 88-536, p. 819; Act 2002-140, p. 359, § 3.)

## HISTORICAL NOTES

### HISTORY

**Amendment notes:**

**The 2002 amendment**, effective June 1, 2002, designated subsections (a)-(c); and in subsection (b) substituted "The" for "In addition, the" and added the second and third sentences.



## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-406. Evaluation of physician who is believed to be impaired; report of findings.** [References](#)

If the Board of Medical Examiners has reasonable cause to believe that a physician is impaired, the board may cause an evaluation of such physician to be conducted by the Alabama Impaired Physicians Committee for the purpose of determining if there is an impairment. The Alabama Impaired Physicians Committee shall report the findings of its evaluation to the Board of Medical Examiners.

(Acts 1988, No. 88-536, p. 819, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

## **ARTICLE 10. LICENSING THE PRACTICE OF MEDICINE AND OSTEOPATHY ACROSS STATE LINES.**

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## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this article became effective July 1, 1997.

## REFERENCES

### ADMINISTRATIVE CODE

15 Ala. Admin. Code 545-X-6-.01 et seq., Medical Licensure Commission; Practice of Medicine or Osteopathy Across State Lines.

**§ 34-24-500. Legislative findings and purpose.** [Historical Notes](#)

The Legislature hereby finds and declares that, because of technological advances and changing practice patterns, the practice of medicine or osteopathy is occurring with increasing frequency across state lines and that certain technological advances in the practice of medicine or osteopathy are in the public interest. The Legislature further finds and declares that the practice of medicine or osteopathy is a privilege and that the licensure by this state of practitioners located outside this state engaging in such medical or osteopathic practice within this state and the ability to discipline such practitioners is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

(Acts 1997, No. 97-166, p. 238, § 1.)

**HISTORICAL NOTES**

**HISTORY**

**Effective date:**

The act which added this section became effective July 1, 1997.

**§ 34-24-501. Definitions.** [Historical Notes](#)

(a) The practice of medicine or osteopathy across state lines means the practice of medicine or osteopathy as defined in Section 34-24-50(1), as it applies to:

(1) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient located within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or his or her agent; or

(2) The rendering of treatment to a patient located within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent.

(3) This definition is not intended to include an informal consultation between a licensed physician located in this state and a physician located outside this state provided that the consultation is conducted without compensation to or the expectation of compensation to either physician and does not result in the formal rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient by the physician located outside the state.

(b) Board means the State Board of Medical Examiners created under Section 34-24-53.

(c) Commission means the Medical Licensure Commission created under Section 34-24-310.

(Acts 1997, No. 97-166, p. 238, § 2.)

**HISTORICAL NOTES**

**HISTORY**

**Effective date:**

The act which added this section became effective July 1, 1997.

**§ 34-24-502. Licensure.** [Historical Notes](#) [References](#)

(a) *License requirement.* No person shall engage in the practice of medicine or osteopathy across state lines in this state, hold himself or herself out as qualified to do the same, or use any title, word, or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine or osteopathy across state lines in this state unless he or she has been issued a special purpose license to practice medicine or osteopathy across state lines in accordance with the provisions of this article; provided however, that no person who holds a full, unrestricted and current license issued under Sections 34-24-310 to 34-24-343, inclusive, shall be required to obtain a special purpose license to practice medicine or osteopathy across state lines.

(b) *Issuance of license.* The Medical Licensure Commission shall issue a special purpose license to practice medicine or osteopathy across state lines upon presentation by an applicant of a certificate of qualification issued by the State Board of Medical Examiners in accordance with this section. The authority of the commission to issue, revoke, or suspend the special purpose license to practice medicine or osteopathy across state lines shall be the same as the general authority granted to the commission under Sections 34-24-310 to 34-24-406, inclusive. The State Board of Medical Examiners shall issue a certificate of qualification to the Medical Licensure Commission certifying an applicant for a special purpose license to practice medicine or osteopathy across state lines who has met the following requirements:

(1) The applicant holds a full and unrestricted license to practice medicine or osteopathy in any and all states of the United States or in territories in which such individual is licensed; and

(2) The applicant has not had any previous disciplinary action or other action taken against the applicant by any state or licensing jurisdiction.

(3) In the event of previous disciplinary or other action against the applicant, the board may issue a certificate of qualification if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public. An individual shall submit an application for a certificate of qualification for a special purpose license to practice medicine or osteopathy across state lines on a form provided by the board and shall remit an application fee in an amount established by the board in its regulations.

(c) A special purpose license issued by the commission to practice medicine or osteopathy across state lines limits the licensee solely to the practice of medicine or osteopathy across state lines as defined herein. The special purpose license in this state is valid for a period of three years, shall expire on a renewal date established by the commission in its regulations in the third calendar year after its issuance, and may be renewed upon receipt of a renewal fee as established by the commission in its regulations. Failure to renew a license according to the renewal schedule established by the commission shall result in the automatic revocation of the special purpose license to practice medicine or osteopathy across state lines; provided, however, that an applicant may re-apply following automatic revocation for failure to renew.

(Acts 1997, No. 97-166, p. 238, § 3.)

## HISTORICAL NOTES

### HISTORY


**Effective date:**

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons  4, 5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18-20.

#### **§ 34-24-503. Effect of license.** [Historical Notes](#) [References](#)

(a) The issuance by the commission of a special purpose license to practice medicine or osteopathy across state lines subjects the licensee to the jurisdiction of the board and the commission in all matters set forth in Sections 34-24-50 to 34-24-83, inclusive, and Sections 34-24-310 to 34-24-406, inclusive, and the implementing rules and regulations of the commission and the board, including all matters related to discipline. It shall be the affirmative duty of every licensee to report to the Board of Medical Examiners in writing within 15 days of the initiation of any disciplinary action against the license to practice medicine or osteopathy of the licensee by any state or territory in which the licensee is licensed. In addition, the licensee agrees, by acceptance of such license, to produce patient medical records or materials as requested by the board or the commission or to appear before the board or the commission or any of its committees following receipt of a written notice issued by the board or commission. Such notice may be issued by the board or the commission pursuant to the authority granted under Sections 34-24-52, 34-24-56, and Sections 34-24-310 to 34-24-406 inclusive.

(b) The Medical Licensure Commission is hereby authorized to temporarily suspend a special purpose license to practice medicine or osteopathy across state lines without a hearing on either of the following grounds:

(1) The failure of the licensee to appear or produce records or materials as requested by the board or the commission; or

(2) The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice medicine or osteopathy.

(c) Notwithstanding any other provision of law including the Alabama Administrative Procedure Act to the contrary, the temporary suspension provided herein shall remain in effect until either the licensee has complied with the request of the board or commission or the disciplinary action pending against the licensee has been terminated in favor of the licensee and the temporary suspension is terminated by a written order of the Medical Licensure Commission. In addition to the foregoing, a special purpose license to practice medicine or osteopathy across state lines is subject to each of the grounds for disciplinary action as provided in Section 34-24-360, in accordance with procedures set out in Section 34-24-361, and the Alabama Administrative Procedure Act.

(Acts 1997, No. 97-166, p. 238, § 4.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(4).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 26-27.

**§ 34-24-504. Patient medical records.** [Historical Notes](#) [References](#)

Any licensee licensed under the provision of this article shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this state are maintained.

(Acts 1997, No. 97-166, p. 238, § 5.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒10.

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

**§ 34-24-505. Exemptions.** [Historical Notes](#) [References](#)

(a) A physician who engages in the practice of medicine across state lines in a medical emergency, as defined by the board, is not subject to the provisions of this article.

(b) A physician who engages in the practice of medicine or osteopathy across state lines on an irregular or infrequent basis is not subject to the provisions of this article. The "irregular or infrequent" practice of medicine across state lines is deemed to occur if such practice occurs less than 10 times in a calendar year or involves fewer than 10 patients in

a calendar year or comprises less than one percent of the physician's diagnostic or therapeutic practice.

(Acts 1997, No. 97-166, p. 238, § 6.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒5(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

**§ 34-24-506. Sanctions.** [Historical Notes](#) [References](#)

(a) Any person who violates the provisions of this article is subject to criminal prosecution for the unlicensed practice of medicine or osteopathy under the provisions of Section 34-24-51, or injunctive or other action authorized in this state to prohibit or penalize continued practice without a license under the provisions of Section 34-24-52.

(b) Nothing in this article shall be interpreted to limit or restrict the commission's authority to discipline any physician licensed to practice in this state who violates the provisions of Sections 34-24-310 to 34-24-406, inclusive, while engaging in the practice of medicine within this or any other state.

(Acts 1997, No. 97-166, p. 238, § 7.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Physicians and Surgeons ☒6(1).

**Corpus Juris Secundum:**

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.

**§ 34-24-507. Reciprocity.** [Historical Notes](#) [References](#)

Notwithstanding any of the provisions of this article, the commission shall only issue

a special purpose license to practice medicine or osteopathy across state lines to an applicant whose principal practice location and license to practice is located in a state or territory of the United States whose laws permit or allow for the issuance of a special purpose license to practice medicine or osteopathy across state lines or similar license to a physician whose principal practice location and license is located in this state. It is the stated intent of this article that physicians and osteopaths who hold a full and current license in the State of Alabama be afforded the opportunity to obtain, on a reciprocal basis, a license to practice medicine or osteopathy across state lines in any state or territory of the United States as a pre-condition to the issuance of a special purpose license as authorized by this article to a physician or osteopath licensed in such state or territory. The State Board of Medical Examiners shall determine which states or territories have reciprocal licensure requirements meeting the qualifications of this section.

(Acts 1997, No. 97-166, p. 238, § 8.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒4.

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

## § 34-24-508. Rule making. [Historical Notes](#) [References](#)

The State Board of Medical Examiners and the Medical Licensure Commission are each vested with authority to adopt and promulgate rules and regulations to effect the purposes of this article.

(Acts 1997, No. 97-166, p. 238, § 9.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective July 1, 1997.

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Physicians and Surgeons ☒5(1).

#### Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.





## Members - Board of Medical Examiners



### ALABAMA BOARD OF MEDICAL EXAMINERS LARRY D. DIXON, EXECUTIVE DIRECTOR

P.O. BOX 946  
MONTGOMERY, AL 36101-0946

TELEPHONE: (334) 242-4116

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June 18, 2004

Member	Address	Term Expires
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Hon. Craig H. Christopher, MD <b>Vice-Chairman</b>	Birmingham, AL	June 2006
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SIGNATURE: \_\_\_\_\_

Larry D. Dixon, Executive Director

DATE: \_\_\_\_\_

7.13.04

Updated: 06/18/04  
sd



## Members - Medical Licensure Commission



### STATE OF ALABAMA MEDICAL LICENSURE COMMISSION

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JERRY N. GURLEY, M.D.  
CHAIRMAN/EXECUTIVE OFFICER

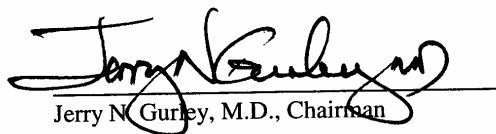
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AMY T. DORMINEY  
EXECUTIVE ASSISTANT

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Jerry N. Gurley, M.D., Chairman



ALABAMA STATE BOARD OF MEDICAL EXAMINERS

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October 5, 2004

Mr. Ronald L. Jones, Chief Examiner  
Alabama Department of Examiners of  
Public Accounts  
PO Box 302251  
Montgomery, AL 36130-2251

Dear Mr. Jones:

I have received your auditor's list of significant items following the Sunset Audit of the Alabama Board of Medical Examiners. I will respond to them per your request in the following manner:

**1) Lack of Direct Reimbursement for Services by a Third-Party Insurance**

**Companies continues to be the significant issue for physician's assistants.**

Obviously, the Alabama Board of Medical Examiners cannot affect this situation. The decisions of the health insurance carriers as to what services can or cannot be reimbursable is not within the purview of the Alabama Board of Medical Examiners even though it causes consternation to physicians' assistants who are licensed by this agency.

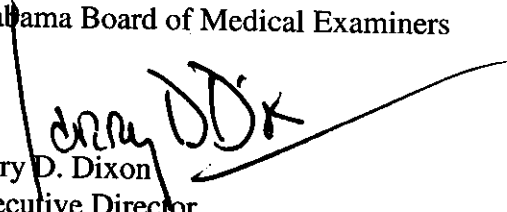
**2) Malpractice Lawsuits and the Rising Cost of Malpractice Insurance continue to be the significant issues for physicians.** As with significant item number one the cost of malpractice insurance is directly related to the number of judgements and settlements in this state, factoring in the risk factors and all of the other financial tables used by insurance companies. The setting of malpractice rates is not within the purview of the Alabama Board of Medical Examiners.

**3) The most significant issue cited by the Board of Medical Examiners and the Medical Licensure Commission, in response to the Examiners of Public Accounts survey, is the cost of the defending its disciplinary decisions in courts.** As is noted in the significant item, between 2000 and August of 2004, the BME/MLC spent eight hundred and five thousand four hundred dollars (\$805,400.00) in legal fees to outside counsel to defend revocation decisions involving eight medical licensees and indefinite suspension of another. All but

Page Two  
Mr. Ron Jones  
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four of the cases are concluded with two pending in the Court of Civil Appeals and two in the Alabama Supreme Court. The Alabama Medical Licensure Commission, quite frequently, must discipline physicians at the height of their earning powers. With physicians who have tremendous financial and personnel obligations, revocation of their license is complete professional disaster; therefore, they are quick to pursue all of their avenues of appeal. Consequently, the BME/MLC has been forced to go to the Alabama Supreme Court to sustain licensure revocations. All decisions have been ratified at that level up to this point. The BME/MLC has been judicious in its spending patterns over the years and has set aside a legal defense fund for this very purpose which is obviously necessary.

Sincerely,  
Alabama Board of Medical Examiners



Larry D. Dixon  
Executive Director

LDD/mlm